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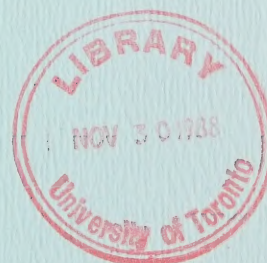
VOLUME: 59

DATE: Tuesday, November 15th, 1988

BEFORE: M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



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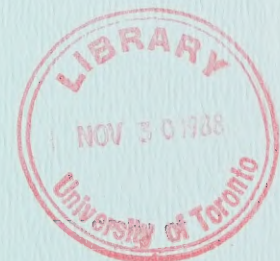
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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council
(O.C. 2449/87) authorizing the
Environmental Assessment Board to
administer a funding program, in
connection with the environmental
assessment hearing with respect to the
Timber Management Class
Environmental Assessment, and to
distribute funds to qualified
participants.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Tuesday, November 15th,
1988, commencing at 9:00 a.m.

VOLUME XLIV

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH)	RESOURCES
MS. K. MURPHY)	
MR. B. CAMPBELL)	MINISTRY OF ENVIRONMENT
MS. J. SEABORN)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
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	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	

APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.) MR. B. BABCOCK)	RED LAKE-EAR FALLS JOINT MUNICIPAL COMMITTEE
MR. D. SCOTT) MR. J.S. TAYLOR)	NORTHWESTERN ONTARIO ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL) MR. S.M. MAKUCH)	GREAT LAKES FOREST
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON

(iii)

APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO
TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>CAMERON CLARK,</u> <u>FRANK KENNEDY,</u> <u>JOHN McNICOL,</u> <u>JOSEPH BEECHEY,</u> <u>NEVILLE WARD,</u> <u>GORDON PYZER, Resumed</u>	10071
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E R R A T A

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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
373	Document entitled: Ministry of Natural Resources Action Plan on Forest Management, dated October, 1986.	10084
374	Document entitled: Ministry of Natural Resources Policy re: Application of Manual of Instructions for Aquatic Habitat Inventory Surveys.	10203
375	Ministry of the Environment Interrogatories No. 5, 9, 10 and 16 for Panel 7, and their answers.	10203



1 ---Upon commencing at 9:00 a.m.

2 THE CHAIRMAN: Good morning. Be seated,
3 please.

4 Very well, Mr. Williams, are you ready to
5 go?

6 MR. WILLIAMS: Yes, Mr. Chairman.

7 CAMERON CLARK,
8 FRANK KENNEDY,
9 JOHN McNICOL,
10 JOSEPH BEECHEY,
11 NEVILLE WARD,
12 GORDON PYZER, Resumed

13 CONTINUED CROSS-EXAMINATION BY MR. WILLIAMS:

14 Q. Members of the panel, I am going to
15 be exploring with you some of the areas I was
16 questioning you on the other day but perhaps in a more
17 specific fashion, and I found that the contribution by
18 all of the witnesses to questions being directed to one
19 particular witness were perhaps deflecting away from
20 getting the specific answers, so I am going to try to
21 be precise with one witness at a time and have that
22 witness answer as specifically as he can to those
23 questions.

24 With that in mind, I will start again
25 with you, Mr. Clark. Mr. Clark, were you an author of
any part of the Class EA?

MR. CLARK: A. No, I was not.

1 Q. During your employ with the Ministry,
2 have you participated as a member of an
3 interdisciplinary team working on a timber management
4 plan?

5 A. Well, I was in Wawa District under
6 the old system.

7 Q. You mentioned that the other day.
8 Can you be specific as to which plans you participated
9 in and in what capacity?

10 A. We produced plans for the TIC, Wawa,
11 Lake Superior, and Dubray's FMA.

12 Q. T-I-C stands for -- is that the TIC?

13 A. TIC, Ticamaganda. I believe those
14 were the ones.

15 Q. And your participation was in your
16 capacity as a district manager?

17 A. That's right.

18 Q. And this all occurred during that
19 two-year period?

20 A. That's correct, mostly during the
21 last year.

22 Q. So those are the four timber
23 management plans that you participated in that you
24 referred to in your curriculum vitae?

25 A. That's correct.

1 Q. How was the timber management plan
2 process used at that time different from that proposed
3 in this Class EA?

4 A. Well, in fact, in Wawa District it
5 wasn't a great deal different. The Ministry was in the
6 process of making changes, our timber staff were aware
7 of those changes and we incorporated the majority of
8 them in the process.

9 I think the point I made last week was
10 that the requirements weren't mandatory at that time
11 but, for example, perhaps the most significant
12 difference related to the requirement for public
13 consultation at four distinct intervals.

14 And, for example, in the cases of the
15 plans that we did in Wawa District, we went through
16 that process. We went through an area of concern
17 planning process that was essentially the same as the
18 one that's been identified at the hearings and will be
19 elaborated on in Panel 15.

20 Q. Sorry, you were applying some of the
21 new techniques to that one particular --

22 A. All of the units.

23 Q. To all of units?

24 A. Yes, because most of those plans were
25 done within the space of a year roughly.

1 Q. Well then, are you saying that the
2 proposed process is basically the same as it was at
3 least at the time you were doing those--

4 A. Very similar.

5 Q. --plans?

6 A. And I would be hard pressed, I guess,
7 to make a distinction, seeing that it has been over two
8 years since I was there, but it was essentially the
9 same.

10 Q. You can't think of any salient
11 features or approaches that are applied now that are
12 different from what was done then?

13 A. Well, at least in our district, as I
14 say, we had adopted, to the extent that we could, the
15 new provisions and so I think, by and large, they were
16 essentially the same.

17 Now, I may stand to be corrected, but I
18 would have to revisit those plans and the files to be
19 sure.

20 MR. WILLIAMS: Mr. Freidin, are any of
21 the witnesses on the panel, are they appearing on
22 future panels?

23 MR. FREIDIN: On future panels?

24 MR. WILLIAMS: Yes.

25 MR. FREIDIN: Yes, all of them except for

1 Mr. Beechey are appearing on different panels.

2 MR. WILLIAMS: So they would be --

3 MR. FREIDIN: Oh, and Mr. McNicol, I am
4 sorry. Sorry, Mr. McNicol.

5 MR. CLARK: So far.

6 MR. WILLIAMS: Q. Last Wednesday, Mr.
7 Clark, we touched on the Baskerville Report which was
8 issued while you were a district manager. As I recall,
9 in your expert advice you accepted the criticism of Dr.
10 Baskerville concerning optimization of resource
11 benefits. Am I correct in that conclusion?

12 MR. CLARK: A. I can recall my answer
13 was rather long. I am not sure that it represented
14 acceptance, I guess in the sense that I indicated that
15 the difficulty of achieving cause and effect
16 relationships in translating -- or being able to
17 identify cause and effect relationships and then being
18 able to translate that into specific objectives for a
19 variety of values that are dealt with in timber
20 management planning is something that is very
21 difficult. That was the gist of my comments.

22 Q. I think I gave you a rather long
23 recital from Baskerville and you responded in kind, as
24 you said.

25 I am wondering if I can be a little more

1 precise by quoting simply two sentences from
2 Baskerville, and perhaps you could, in turn, be as
3 precise in indicating to the Board whether you concur
4 in his observations. I am referring to page 84 of the
5 Baskerville Report and there are -- the second full
6 paragraph - and I will interject upon myself - you have
7 read the Baskerville Report, of course, I think you
8 indicated that the other day in your knowledge about
9 the report and its import; is that correct?

10 A. I have read it.

11 Q. You appreciate the importance of the
12 document relative to the--

13 A. Absolutely.

14 Q. --to this Ministry's position in
15 dealing with timber management?

16 The paragraph I refer you to is the
17 second full one, and I am just going to direct you to
18 the first two sentences of that paragraph which I will
19 read for the record:

20 "The absence of a technically sound
21 approach to integration of timber with
22 non-timber values is a more serious
23 problem that will require considerable
24 change in the system if the desired level
25 of integration is to be achieved. The

1 approach used to integration of timber
2 with non-timber values is based on local
3 judgment with no objectivity measurable
4 standards."

5 That is I think what I was -- the concern
6 of Baskerville's that I was conveying to you in my
7 question last week in a more succinct fashion.

8 And, as I said to you a moment ago, my
9 recollection is that you acknowledge the criticism, but
10 how did you then, if you can be specific, respond to
11 the concern over the optimization of resource benefits
12 in that context?

13 A. As I recall, I made a distinction
14 between art and science and I indicated that depending
15 on the particular value that we were dealing with that
16 value would fit somewhere on the spectrum.

17 And I used, for example, the issue of
18 moose and the establishment of objectives for moose
19 management as a situation where the amount of
20 information we have and the science that backs it up is
21 significant and the sort of objectivity that he is
22 talking about here is quite well developed.

23 I, on the other hand, talked about some
24 other values, and I think I mentioned aesthetics, that
25 are very difficult to quantify and I made reference to

1 the fact that the system that we have relies heavily on
2 the input of individuals who are affected and on their
3 ability to find values that are of concern to them, for
4 example, aesthetics.

5 The last point I think I made was that
6 this is a laudable objective and certainly the
7 objective of becoming more objective in quantifying
8 these things, but I also stressed I think what the
9 other two witnesses Mr. Beechey and Mr. McNicol said,
10 was that we are dealing with highly complex systems
11 which are not easily defined and it will take some time
12 before we are in a position to satisfy the requirements
13 that he has identified here.

14 Q. Has any policy decision been made by
15 the Ministry with regard to the report and, if so, have
16 any directives been issued at the district level?

17 A. Well, the Ministry -- we did identify
18 and I think -- I am not sure whether it was an 18-point
19 action plan that spoke to the Baskerville Report, and I
20 believe Mr. Douglas or Mr. Monzon probably referenced
21 that. Without actually looking at that plan, I can't
22 give you details as to exactly what commitment was
23 made.

24 Q. Was there nothing in the 18-point
25 plan that was directed specifically to the district

1 level and manner of operations; was there no direction
2 in those references to how the district manager and the
3 district office should operate differently from the way
4 they were doing it before the Baskerville Report?

5 A. I would have to look at the action
6 plan.

7 THE CHAIRMAN: Mr. Williams, with respect
8 to the Baskerville Report, we have the indication - I
9 suppose we could almost call it an undertaking - of the
10 proponent to call Dr. Baskerville.

11 MR. WILLIAMS: Yes.

12 THE CHAIRMAN: I would suggest that at
13 the time he does appear he will most likely be
14 questioned extensively on his report and, as well, the
15 Ministry will likely be questioned in cross-examination
16 as to their responses to that report and I am just
17 wondering if this is the most opportune time to deal
18 with the Ministry's response to Dr. Baskerville's
19 report.

20 MR. WILLIAMS: It is difficult to know
21 how far you can go without the benefit of having heard
22 from Dr. Baskerville, I agree, Mr. Chairman.

23 And, in light of the last answer, I don't
24 think I can pursue that further because the witness, as
25 I understand, showed how applicable it is to the

1 district operations. So I think that can be pursued
2 later, given that he will be back as a witness in
3 another panel.

4 THE CHAIRMAN: I think the Board can
5 reassure the parties that at the time Dr. Baskerville
6 does appear, if it becomes necessary on the part of
7 some of the parties to want to question witnesses
8 previously called by the Ministry who would be in a
9 position to properly respond to questions concerning
10 Dr. Baskerville's report, the Board would probably look
11 with favour towards recalling those witnesses to do
12 just that.

13 We understand that parties may wish to
14 put questions to certain witnesses being called in
15 various panels concerning Dr. Baskerville. The Board
16 has consistently indicated that it would be better if
17 we perhaps waited for Dr. Baskerville to actually
18 appear and indicate what he meant in terms of certain
19 statements made in his report and I think, in order to
20 accommodate the parties' desire to question witnesses
21 concerning that report, the Board would probably be in
22 a position to recall some of those witnesses if it
23 became necessary.

24 MR. WILLIAMS: That assurance as to right
25 of recall is helpful, Mr. Chairman, and I wasn't

-1 planning to pursue the matter really beyond that level
2 of questioning, although I will be asking the other
3 witnesses to the extent to which they were familiar
4 with the report and to what level, but beyond that I
5 won't be going -- I will be...

6 THE CHAIRMAN: Well, other than asking
7 them if they are familiar with the report - and I would
8 suggest to you that most witnesses called by the
9 Ministry working for the Ministry probably are familiar
10 with that report --

11 MR. WILLIAMS: That's our assumption, but
12 we just want to make that clear, Mr. Chairman.

13 THE CHAIRMAN: Okay. Ask that question
14 and then, if we could, I think it would be better to
15 move on from the Baskerville Report until the
16 appropriate time.

17 MR. WILLIAMS: I had no further questions
18 on that than the level to which I had developed them on
19 the Baskerville Report.

20 MR. KENNEDY: Mr. Williams, if I might be
21 of some assistance here. With the Ministry of Natural
22 Resources' action plan resulting from the Baskerville
23 Report, which is dated October, '86, I believe it has
24 been filed earlier, on page 3 there is a reference to
25 the action the Ministry is taking in this regard and

1 specifically beginning in -- if I could read a portion
2 of it:

3 "Beginning in 1987, all new timber
4 management plans will contain clear
5 statements of objectives that are
6 measurable and attainable."

7 THE CHAIRMAN: Well, Mr. Kennedy, again,
8 I don't want to interrupt you, but I think what you are
9 reading has been covered to some extent by Dr. Armson
10 in an earlier panel and we are just reiterating what I
11 think has already gone in.

12 I am not sure how helpful it is to have
13 the evidence coming in about the Baskerville Report in
14 a fragmented fashion. We have heard something in one
15 of the earlier panels that has been referenced
16 throughout the rest of the hearing to date about it and
17 I think it would be better to wait until Dr.
18 Baskerville is actually here; he can be questioned on
19 his report and the Ministry can respond to those
20 questions.

21 MR. WILLIAMS: Q. That document, Mr.
22 Kennedy, you are referring to, that's an exhibit
23 already; is it not?

24 MR. KENNEDY: A. Yes, I believe it is.

25 MR. WILLIAMS: What exhibit is that, Mr.

1 Freidin -- Or do you know, Mr. Kennedy -- cited as to
2 what exhibit number it is? It will be before us at the
3 time we discuss the Baskerville Report, I presume, Mr.
4 Freidin?

5 MR. FREIDIN: One moment and we will be
6 able to tell you.

7 One of the documents which was filed was
8 Exhibit 58 spoken to by Mr. Armson. It was basically
9 an update as to what the status was of the various --
10 what the status was of the various actions at the time
11 of giving his evidence.

12 MR. WILLIAMS: Is that one and the same
13 document that Mr. Kennedy was referring to?

14 MR. FREIDIN: Perhaps I can show Mr.
15 Kennedy Exhibit 58 and ask him whether in fact he was
16 referring to part of that document. (handed)

17 MR. KENNEDY: It is not the same paper,
18 but the words are shown on that document on page 5,
19 Item No. 7, Mr. Chairman.

20 MR. WILLIAMS: All right. Just before we
21 move on, Mr. Chairman, just to get this cleared up,
22 sorry to pursue this.

23 Q. But the document that you were
24 referring to, Mr. Kennedy, if that hasn't been made an
25 exhibit, could that be identified and made available to

1 us and could we have that undertaking to determine
2 whether it should be introduced as an exhibit?

3 THE CHAIRMAN: Okay. Just to make the
4 record complete. Mr. Kennedy, I think it would be in
5 order for you to identify that document, let's make it
6 an exhibit at this time, but not go beyond it and we
7 can refer to it when Dr. Baskerville is called.

8 Can you give us the title of it and the
9 date, please?

10 MR. KENNEDY: The document that I was
11 referring to initially is titled: Ministry of Natural
12 Resources Action Plan on Forest Management, and it is
13 dated October, 1986.

14 THE CHAIRMAN: Okay. That will be
15 Exhibit 373.

16 MR. WILLIAMS: Thank you.

17 ---EXHIBIT NO. 373: Document entitled: Ministry of
18 Natural Resources Action Plan on
19 Forest Management, dated October
1986.

20 MR. WILLIAMS: Q. Mr. Clark, we briefly
21 discussed the other day the matter of professional
22 training given to individuals involved in the timber
23 management planning process with respect to the
24 environmental assessment.

25 Could you tell me the professional

1 courses that you personally received immediately prior
2 to or during your tenure as a district manager dealing
3 with the four specific areas, and these are
4 professional courses that I am asking you about:

5 Optimization of resource benefits,
6 integrated resource management and tradeoff
7 decision-making; thirdly, resource evaluation; and,
8 fourthly, dealing with uncertainty in making public
9 policy choices.

10 MR. CLARK: A. During my tenure as a
11 district manager I didn't take any courses of that
12 nature.

13 Q. What about between then and now, as a
14 policy officer and, in that new capacity, have you had
15 any professional courses dealing with those topics to
16 better assist you in the discharge of your duties or
17 responsibilities as a policy officer?

18 A. Well, most recently I took a course
19 at the Banff Management Centre on how to prepare for an
20 environmental hearing.

21 Q. Ah-huh, the secret comes out.

22 A. And there was a considerable amount
23 of context in that course that was relevant to this
24 exercise.

25 MR. MARTEL: Who organized it, MNR?

1 THE CHAIRMAN: Does it bear any
2 resemblance to what you learned, Mr. Clark?

3 MR. CLARK: Sometimes.

4 MR. WILLIAMS: Q. And, I presume, Mr.
5 Clark, your answer to the question is you have taken no
6 professional courses other than in your capacity as a
7 district manager or as a policy officer in northern
8 Ontario with regard to these four specific areas?

9 MR. CLARK: A. That's correct.

10 Q. Thank you. As a district manager,
11 how did you decide when sufficient information was
12 available to make a decision?

13 A. Well, as I think I pointed out last
14 week, the first cut was to rely on the recommendation
15 of my staff from the various branches or programs that
16 were represented in the district.

17 If I was unable at that time to make a
18 determination, I made reference to regional expertise
19 or possibly main office expertise or possibly expertise
20 outside the Ministry, either in other government
21 agencies or outside of government, and I think I went
22 through that in a fair amount of detail last week.

23 Q. Would you say or would you agree,
24 given the evidence presented so far in these hearings,
25 that the level of precision and depth of understanding

1 is far superior with respect to the forest resources
2 management component than for the non-timber resources?

3 A. No, I don't think I would want to
4 make that generalization.

5 Q. Are you saying to the Board then that
6 there is not a higher level of certainty that has been
7 available because of the extent and depth of timber
8 management resources and data available as compared to
9 non-timber, that there is an equal level of certainty
10 in both sectors?

11 A. I think it is -- frankly, it is very
12 hard for me to talk about that in general terms. I
13 think that we are talking about the content of these
14 hearings --

15 Q. How recently -- let me ask you
16 this -- just give me a moment.

17 All right. Let me just direct your
18 attention to these resource management tools, the three
19 timber management guidelines that we have been talking
20 about, the wildlife information for use in timber
21 management planning policy, the similar fish
22 information and management guideline document, the
23 Crown land timber management manual, the district
24 fisheries management plans, the timber management
25 planning manual that relates to rare, threatened and

1 endangered species in Ontario, resource access roads,
2 policy and implementation strategies and guidelines,
3 construction and mitigation handbook for MNR Class EA
4 projects, environmental guidelines for access roads and
5 water crossings.

6 How current are all of these non-timber
7 resource management tools that have been developed; are
8 they pre-1985 or post-1985?

9 A. I think the majority of them were
10 probably post-1985.

11 Q. How have you been able to work with
12 the same degree of certainty without the benefit of
13 those documents in earlier years while relying on the
14 extensive pool of resource information that was
15 available in doing timber management planning?

16 A. I don't know that we were. I think
17 that's why we developed them, the guidelines.

18 Q. Well then, clearly there must have
19 been a much higher degree of uncertainty in the area of
20 dealing with non-timber resources than in dealing with
21 timber resources?

22 THE CHAIRMAN: Is that in the past or
23 now?

24 MR. WILLIAMS: In the past up until now,
25 I would suggest.

1 MR. CLARK: I just find that we are
2 dealing in such general terms here, it is very hard for
3 me to relate to exactly what you are saying. There is
4 no doubt a considerable amount of technical and
5 scientific uncertainty about certain things that we are
6 involved in.

7 MR. WILLIAMS: Q. Is it more so in the
8 non-timber areas than in the timber area, timber
9 management area?

10 MR. CLARK: A. I would say it is
11 probably more so.

12 Q. Mr. Clark, I guess the difficult
13 question is: What is practical and what is the
14 reasonable amount of information that has to be
15 compiled in order that certainty can be achieved in
16 both sectors; would you agree?

17 A. Correct.

18 Q. Now, it seems to me, Mr. Clark, that
19 one of the most difficult decisions that this Board is
20 going to have to make is what indeed will be deemed a
21 reasonable minimum amount of information for a Class EA
22 to be acceptable.

23 Based on your experience as a district
24 manager and a policy analyst, would you feel that the
25 information base presented in this panel represents the

1 minimum reasonable information required to prepare an
2 acceptable Class Environmental Assessment?

3 A. It represents the kinds of
4 information that are necessary. As I pointed out in my
5 evidence, the quality and quantity of information is
6 dependent on the specific decisions being made. To the
7 extent that, for example, in the context of wildlife,
8 there are implicit minimums involved in the wildlife
9 policy as it relates to timber management and to the
10 fisheries guidelines, to the best my knowledge, based
11 on the advice that I received from my colleagues in
12 either fish and wildlife, the minimums that are
13 identified there are satisfactory.

14 THE CHAIRMAN: Mr. Williams, what is the
15 ramification of that last question you just asked?

16 Surely this Board is not going to make
17 its decision on whether or not the information provided
18 is adequate for the purposes of the Board ruling under
19 Section 12 that the EA is acceptable when you are
20 focusing in on only this panel.

21 I mean, obviously we are looking at all
22 of the evidence presented at this hearing which, as you
23 are aware, will comprise some 17 or 18 panels of
24 witnesses and we have to look at the overall picture.

25 What is the point of asking whether or

1 not the information presented by this panel constitutes
2 the minimum necessary for the Board to accept the EA?

3 MR. WILLIAMS: Well if, in fact, Mr.
4 Chairman, there is other minimum information that's out
5 there that we haven't heard of, I think that's
6 important to know. I think it is important for the
7 Board to know, I think it is important for us to know.
8 We appreciate there are things to come.

9 I have tried to identify in an earlier
10 question some of the new data information, resource
11 information that's been made available which the
12 witness conceded has been developed since 1985, and I
13 am simply asking whether that material is adequate
14 minimum information to deal effectively with the
15 process, anticipating that it will be a factor in your
16 decision-making as to whether there is sufficient
17 certainty applicable on the non-timber management side
18 of the discourse as there is to the timber management
19 side.

20 THE CHAIRMAN: But we have to base our
21 decision on all of the evidence presented at this
22 hearing.

23 MR. WILLIAMS: Yes, I understand that.

24 THE CHAIRMAN: Not just evidence
25 presented by this one panel.

1 MR. WILLIAMS: You can appreciate it puts
2 us in a difficult position too because we have to work
3 through all of the panels and we can only take it up to
4 this point and try to determine if he can make that
5 determination at this time.

6 THE CHAIRMAN: This is my very point.
7 First of all, it is going to be a decision for the
8 Board--

9 MR. WILLIAMS: Of course.

10 THE CHAIRMAN: --as to the adequacy of
11 the information, but how can a witness on a panel at
12 this stage of the hearing, even if their opinion was
13 relevant as to the adequacy - which I suggest to you
14 may or may not be the case since it is the Board's
15 decision and not the witness' --

16 MR. WILLIAMS: Perhaps I can be more
17 precise and ask if it is the opinion of the witness
18 whether there is minimum reasonable information
19 available in that part of the non-timber sector that
20 relates to fish and wildlife management.

21 THE CHAIRMAN: Okay.

22 MR. FREIDIN: Maybe that is a question
23 which is properly before Mr. Ward.

24 MR. WILLIAMS: Mr. Clark is a policy
25 officer, he must be satisfied whether or not --

1 THE CHAIRMAN: No, but aren't you dealing
2 with a specific aspect such as information relating to
3 fisheries. Shouldn't that go to Mr. Ward?

4 MR. WILLIAMS: Well, if Mr. Clark can't
5 answer it, then I have no choice.

6 Q. Mr. Clark, are you able to answer
7 that question.

8 MR. CLARK: A. Well, I would answer it
9 the way I answered it before. Based on my
10 understanding and the advice that I have received from
11 fisheries biologists and wildlife biologists in the
12 Ministry, the information requirements identified in
13 the two policies that were discussed previously
14 represent a reasonable minimum.

15 Q. All right. And Mr. Ward and Mr.
16 McNicol, could you assist us on that? Do you concur
17 with Mr. Clark's views or do you have anything further
18 to add?

19 MR. WARD: A. Well, the fisheries policy
20 outlines the minimum information requirements for
21 fisheries; that's fish species present, the shoreline
22 slope and identification or location of critical fish
23 habitat. So if we have that information, that's the
24 minimum amount of information we need to protect fish
25 habitat from timber activities.

1 MR. McNICOL: A. In the context of your
2 question, Mr. Williams, reasonable minimum, I would
3 concur with Mr. Clark and Mr. Ward, that at the present
4 time, yes.

5 MR. MARTEL: What do you mean by at the
6 present time? That leaves a connotation or the
7 possible connotation that maybe we should have more,
8 but at the present time this is acceptable. Is that
9 what you are saying?

10 MR. McNICOL: Given current manpower and
11 resources, yes.

12 MR. MARTEL: Well they become an issue
13 then; don't they, manpower and resources? If you had
14 more manpower and more resources, could you do more?

15 MR. McNICOL: It is always an issue, Mr.
16 Martel.

17 MR. CLARK: The other point I would make
18 is that it is given current knowledge, and this is an
19 important part of this, we would like to say the
20 guidelines represent the best information that's
21 available to us right now and the policies reflect
22 that.

23 And later on in the evidence we are going
24 to be talking about an effects monitoring program and
25 it may well be that as a result of that particular

1 program we are able to determine that some of the
2 assumptions that we have made are perhaps incorrect,
3 they may require further work and, in that context, we
4 may then change them. And I think that's the other
5 point I would want to make.

6 MR. WILLIAMS: Q. In making the
7 determination of what is a reasonable expectation of
8 information, were you not, as a district manager, and
9 is not a district manager, any one of 34, faced with a
10 number of competing forces?

11 MR. CLARK: A. Yes.

12 Q. Must he or she not decide how much
13 effort is to be allocated to forest resource data as
14 opposed to non-timber resource data?

15 A. Yes.

16 Q. Is it not true, Mr. Clark, that each
17 district is allocated an annual budget and is not the
18 district manager's responsibility to stay within that
19 budget?

20 A. That's correct.

21 Q. Therefore, the district manager is
22 given a choice, is he not, between the resource
23 programs and staying within his budget?

24 A. The district manager has to set or
25 establish priorities within a budget and within

1 guidelines that are provided, as I pointed out last
2 week, from the region and possibly Assistant Deputy
3 Minister for northern Ontario and main office or the
4 Deputy Minister.

5 Q. Does this mean there are directives
6 from head office, so to speak, that would give a
7 district manager flexibility to adjust his priorities
8 to try to deal with programs that heretofore he might
9 not have been able to because of budgetary limitations?

10 A. Well, I think at any point in time a
11 district manager may wish to evaluate or re-evaluate
12 his priorities and would normally do so in discussion
13 with his staff and his regional director, his immediate
14 supervisor, particularly where significant reallocation
15 of funds was involved.

16 THE CHAIRMAN: Well, Mr. Williams, if I
17 could just follow up on that.

18 I think it is almost a given in any
19 organization that there will have to be some
20 prioritization of resources. Obviously, if everyone had
21 unlimited budgets and they could do as much as they
22 wanted in whatever area, they might well do them.

23 But is there anything that the
24 Ministry -- or sorry, that the district staff receive
25 from main office that directs district staff to weigh

1 one side over the other; in other words, to pay more
2 attention to timber resources rather than non-timber
3 resources in making those decisions?

4 MR. CLARK: Well, No, I don't think so.
5 I think that there may be certain -- as I said last
6 week, there is normally strings attached to money and I
7 think we made reference to the fact that, for example,
8 additional funds had been made available for the moose
9 program and those funds would have been specifically
10 earmarked for that purpose and it would obviously be
11 sometimes difficult to take that money and use it
12 somewhere else.

13 And I guess the point I am making is
14 that, so you are working with fixed amounts of money
15 that are allocated to specific work program planning
16 objectives and there is a limited amount of flexibility
17 on a day-to-day basis to redeploy those resources.
18 Beyond that limit, there is an obvious need to seek
19 confirmation from a higher authority.

20 I mean, this is so that there is some
21 consistency in the way we do things. And that's the
22 only point I am making.

23 Many of those decisions about how much
24 are made up front in the whole work program planning
25 process and I want to stress that we do receive, if you

1 want, corporate guidelines that establish what our
2 basic priorities are and where we will be placing
3 certain amounts of funding and that establishes a
4 framework within which we would work on an annual
5 basis.

6 MR. WILLIAMS: Q. Last Wednesday, you
7 agreed, I believe, with me that a district manager
8 inevitably has some degree of bias towards one program
9 or another depending on the background from which he
10 was coming, whether all of his experience was in forest
11 management and timber management or in the non-timber
12 resource areas; is that correct?

13 MR. CLARK: A. I don't know if I stated
14 it in exactly those terms, but I guess really what I
15 was saying is that everyone has a past and it tends to
16 influence their perspective.

17 Q. All right. Given that, would you not
18 agree that by ensuring that a minimum, if not
19 appropriate, amount of information is specified for a
20 timber management plan, a Class Environmental
21 Assessment by the Board, that some of this conflict
22 would be reduced?

23 A. I think in a general way I do agree
24 and I think that's reflected in what we have done. We
25 have established a minimum for fish, we have

1 established a minimum which is implicit in the policy
2 that deals with wildlife information requirements for
3 timber management and I think it is in that context
4 that those particular policy directives were developed.

5 Q. Would you agree that the need for a
6 minimum amount of information is paramount if there is
7 to be reasonable consistency among the great variation
8 in districts and their related information basis?

9 A. Well, certainly in certain cases, as
10 I just pointed out, I think having established the
11 basic kind and amount of information for certain
12 resources is important, yes, and I keep going back to
13 the two obvious areas that I think you are probably
14 interested in anyway where we have done that, for fish
15 and wildlife.

16 Q. Mr. McNicol, during your employ with
17 the Ministry have you participated as a member of an
18 interdisciplinary team working on a timber management
19 plan?

20 MR. McNICOL: A. Formally and
21 informally.

22 Q. What do you mean by that?

23 A. In the two plans that I have been
24 involved with under the new TMP process, that's my
25 designation for formally.

1 Q. Which two plans are they, by the way?

2 A. The Black Sturgeon Timber Management
3 Plan and the Bright Sands Timber Management Plan.

4 Q. Yes?

5 A. That was my formal participation.
6 Informally, the way we do business or did business
7 before the process became formalized is that these
8 plans were reviewed by all branches prior to their
9 approval. Any concerns of the branches with regard to
10 forest management activities that were taking place in
11 an area of concern would be addressed in an informal
12 process rather than the formalized process that we have
13 now, but those concerns were addressed at that time.

14 Q. Mr. McNicol, your particular training
15 seems to have been quite focused and related primarily
16 to moose; is that correct?

17 A. That's correct.

18 Q. Have you had any training in a
19 broader resource management -- with regard to the
20 broader resource management issues such as those
21 encompassed by this Class EA?

22 A. Could you be more specific with your
23 question?

24 Q. With regard to all of the resource
25 management issues dealing with fish and wildlife that

1 we have been discussing here during this panel, have
2 you had any broader training with regard to those
3 issues prior to this hearing or has your training been
4 primarily with regard to moose?

5 A. With regard to my formal academic
6 training, I do have a degree in forestry. At that time
7 we dealt with a number of issues related to forest
8 management that were non-timber in nature. Many of my
9 courses dealt with issues that were beyond the scope of
10 forest -- timber management, if you will.

11 Q. Perhaps I could expedite this line of
12 questioning if I ask you the same question that I asked
13 Mr. Clark.

14 Could you tell me the professional
15 courses you have received during your present position
16 or during your employ with the Ministry?

17 THE CHAIRMAN: Mr. Williams, wouldn't
18 this be revealed by Mr. McNicol's CV?

19 MR. WILLIAMS: Well, I think -- no, I
20 have to identify the professional courses that I am
21 asking him, whether he has taken any professional
22 training in them and I am not sure whether that would
23 be in his CV, Mr. Chairman.

24 THE CHAIRMAN: Is this information
25 contained in your curriculum vitae?

1 MR. McNICOL: I would suggest not.

2 THE CHAIRMAN: Okay. Very well, go
3 ahead.

4 MR. WILLIAMS: Q. My question again, Mr.
5 McNicol: Could you tell me which professional courses
6 you have taken which deal with the following four
7 specific topics that are at issue in these hearings:
8 Optimization of resource benefits?

9 MR. McNICOL: A. No.

10 Q. Integrated resource management and
11 tradeoff decision-making?

12 A. No.

13 Q. Resource valuation?

14 A. No.

15 Q. Dealing with uncertainty in making
16 public policy choices?

17 A. No.

18 Q. I will ask the obvious, but for the
19 record, are you familiar with the integrated resource
20 management concept?

21 A. Yes.

22 Q. Do you have an appreciation of the
23 concept of optimization?

24 A. Yes.

25 Q. Is this part of the integrated

1 resource management principle?

2 A. It is.

3 Q. Are you familiar with the planning
4 process set out in this Class Environmental Assessment?

5 A. I am.

6 Q. Were you an author of any part of the
7 Class Environmental Assessment?

8 A. I was not.

9 Q. You heard the question I put to Mr.
10 Clark regarding his familiarity with the Baskerville
11 Report.

12 MR. WILLIAMS: Just to get this on, just
13 a couple of questions, Mr. Chairman.

14 Q. Have you read the Baskerville Report?

15 MR. McNICOL: A. I skimmed it.

16 Q. Am I to take from that you are not
17 totally familiar with all of the contents of that
18 report and its recommendations?

19 A. That's correct.

20 Q. Mr. McNicol, let me have you turn to
21 page 70 of your witness statement.

22 MR. MARTEL: Volume 1, Mr. Williams?

23 MR. WILLIAMS: Correct.

24 MR. McNICOL: Was that page 7, Mr.
25 Williams?

1 MR. WILLIAMS: Q. Seven zero.
2 MR. McNICOL: A. That's not my witness
3 statement.
4 Q. In the main statement of evidence, at
5 paragraph 26.
6 MR. FREIDIN: Volume 1, Mr. McNicol.
7 MR. WILLIAMS: Volume 1.
8 MR. McNICOL: Sorry, you are talking
9 about the summary, all right.
10 MR. WILLIAMS: Q. In paragraph 6, you
11 state that -- you are talking about significant special
12 surveys--
13 THE CHAIRMAN: Paragraph 26?
14 MR. WILLIAMS: Paragraph 26, Mr.
15 Chairman.
16 Q. --and the most significant ones are
17 those done for endangered, threatened or rare species.
18 You make reference then to 34 status reports and 18
19 field studies that were completed within the past
20 decade.
21 From my understanding - and correct me if
22 I am wrong - that these particular reports that you are
23 referring to, that their basic characteristic is that
24 they are essentially provincial-wide reports that have
25 universal application on a provincial basis; is that

1 correct? Are you familiar with any of these reports?

2 MR. McNICOL: A. I am familiar with the
3 the status reports, yes.

4 Q. All right. Are you able to respond
5 to that question then?

6 A. Your question is: Are the...

7 Q. Are they basically provincial-wide in
8 context rather than site-specific?

9 A. They go further than province-wide,
10 many of these status reports.

11 Q. In what respect?

12 A. Well, the status reports are directed
13 by COSEWIC to determine the status of a particular
14 species that is thought to be of concern in a
15 nationwide context.

16 Q. I see. And we are speaking strictly
17 from the provincial perspective, are we not, in those
18 reports?

19 Aren't the purpose of those reports to
20 give COSEWIC the Ontario provincial perspective as part
21 of the national determination?

22 A. Many of the species that are dealt
23 with in the status reports were species that were
24 identified initially by Ontario delegates as being
25 species that were of concern. So that was then the

1 provincial context, but their status was assessed
2 nationwide to determine what kind of designation that
3 particular species should have in a nationwide context.

4 Q. All right. What I am really trying
5 to get at is whether the report of that nature would be
6 of assistance to you in dealing with the timber
7 management plan. For example, if -- I think one of the
8 reports that has been prepared deals with loggerhead
9 shrike.

10 Now, would that report provide a
11 reasonable level of information to prepare a
12 site-specific response to in the timber management
13 planning process, or is it so general in nature that it
14 would not be useful in that context; which is the
15 answer?

16 A. The latter, because the status report
17 is looking at the status of that particular species
18 nationwide. It would not, although it has information
19 in there concerning population status in Ontario, the
20 information would not be of a site specific nature.
21 For that type of information, something like the
22 Breeding Bird Atlas would be of more utility.

23 Q. Then if that was the case, that it
24 would not be useful in the timber management planning
25 process in dealing with the specific geography

1 applicable to that particular undertaking, what
2 resource management tool would you rely on to deal with
3 that particular endangered species?

4 A. I think, as I indicated, the Breeding
5 Bird Atlas would provide more site-specific
6 information.

7 Q. So that's the only resource document
8 that you can think of that would assist you in that
9 area?

10 A. No, the National Museum list of rare,
11 threatened and endangered species would also provide
12 information, more site-specific information concerning
13 the existence of that particular species in a more
14 geographically sensitive manner.

15 Q. Can I ask you to turn to page 223 in
16 Volume 1, the evidence, page 223. This is a matter
17 that I think has been discussed at some length earlier
18 in the examination-in-chief and perhaps in cross, but I
19 just want to pursue in this light.

20 Looking at the basic evidence you are
21 giving us here, as I understand it, is that there have
22 to be practical considerations as to the amount of data
23 that can be assembled, given the financial and other
24 resources available to you, and you state that more
25 precisely in the bottom paragraph on page 223 where you

1 say:

2 "Practical considerations such as
3 necessity, time, budgets and opportunity
4 preclude having knowledge of every aspect
5 of the terrestrial environment that might
6 be affected by logging activity."

7 Given that situation, how are the complex
8 decisions made in a uniform fashion across the 34
9 different districts in the 100 forest management units
10 when you have to work with a limited resource base
11 because of these constraints?

12 A. Again, I think, as has been pointed
13 out by Mr. Clark, we do have direction in terms of an
14 implicit minimum amount of information that is
15 necessary before timber management plans can be
16 approved.

17 In terms of that direction, the
18 implication is that we have the amount of information
19 necessary to make the decisions that will ensure that
20 the resources that we are concerned with, specifically
21 wildlife - we are speaking about wildlife - in that
22 area of timber management activity; i.e., our areas of
23 concern, will be identified and will be addressed
24 through the process.

25 Q. I think you said that this was

1 implicit, but it is not -- is that a judgmental type of
2 situation or is that based on directive?

3 A. No, this is following the procedural
4 document that is a follow-up to the policy statement.
5 I think we went through this before in previous
6 testimony, but there are implicit minimum requirements,
7 if you read the policy procedure, things that have to
8 be done to identify wildlife resources within the
9 timber management planning area to allow the proper
10 management and input of area of concern. We can step
11 through that again, but I think we have done that
12 already.

13 Q. Would you see benefit in some
14 standardization of a minimum level of forest and
15 wildlife information being specified for preparing a
16 Class Environmental Assessment?

17 A. Again, I believe that that minimum
18 amount of information is implicit in the direction that
19 we have through the procedural document.

20 Q. And that's standard and universal in
21 its content and application; is that what you are
22 saying?

23 A. It is an Ontario policy, yes.

24 Q. And referring you back again to the
25 sentence I quoted from your evidence, what do you mean

1 there by the term necessity -- "...practical
2 consideration such as necessity." Who decides on
3 necessity?

4 A. The use of that word is implying that
5 with the featured species approach, there are some
6 broad biological principles that come to bear, and that
7 has to do with the concept of habitat diversity, the
8 mosaic of vegetation and the ability -- once you have
9 created that on the land base through timber management
10 planning, the ability of that mosaic to satisfy
11 requirements of other species, both non-game and game
12 on the land base.

13 So what we are saying there is that those
14 concerns, given our biological knowledge of many other
15 species requirements other than moose, many of those
16 requirements will be met by following that directive
17 and creating that vegetative mosaic.

18 So, for instance, it is not necessary to
19 look at rough grouse populations or varying hare
20 populations or fox population, because these species
21 will benefit from that mosaic.

22 Q. What do you mean by opportunity in
23 that same sentence? Who decides on opportunity?

24 A. I think opportunity has to do with
25 the ability to look at, if you will, all of that area

1 that is proposed for timber management activity, given
2 the window of time that is available to accomplish that
3 before plan approval.

4 Also, it deals with the accessibility, if
5 you will, of much of that area prior to access being
6 provided. Most of this area that is proposed for
7 timber management activity is not accessible at the
8 current time, or the time that the plan is evolving.

9 Q. On page 226 of your evidence, in sub
10 (iii) you talk about inventory information for input to
11 timber management planning, and you are referring in
12 this to -- in fact, is this not only one type of
13 regularly collected information that is designed
14 specifically for timber management planning as
15 contrasted to the other two preceding data collection
16 bases that you rely on which is wild rice harvest data
17 and aerial moose population inventory?

18 A. Sorry, your question is: Is this the
19 only one specific to a particular a timber management
20 planning area?

21 Q. Specifically designed for a timber
22 management planning.

23 A. That's correct.

24 Q. Why is it that this particular data
25 collection process appears to be quite unstructured and

1 ad hoc, unlike the detailed survey procedures described
2 with the other two?

3 No details were given as to how these
4 surveys were carried out, they haven't mentioned any
5 survey methodology or any survey plotting or minimum
6 sampling frequency, none of that is described in this
7 inventory information collection procedure as compared
8 to the other two, why?

9 A. As you have pointed out, the
10 information that is to be collected is detailed in the
11 information document -- in the procedural document.
12 The means by which that information is to be collected
13 at this juncture has not been formalized on a
14 provincial -- from a provincial perspective.

15 However, what we are doing is getting
16 direction at a regional level in terms of how this
17 information is to be collected. The northcentral
18 region, for instance, has had three workshops talking
19 to the procedure by which this information should be
20 collected.

21 The provincial direction, in terms of how
22 this should be executed from a provincial perspective,
23 is forthcoming and will be the subject of a future
24 workshop that will look at -- that will have delegates
25 from all of the regions who are, if you will,

1 experimenting with the most efficient means for
2 collecting this information.

3 Remember that this policy directive is
4 relatively new and what we are trying to do is develop
5 the most efficient means for collecting this particular
6 information.

7 Q. So this particular inventory
8 information program is incomplete and not yet
9 perfected; is that what you are saying?

10 A. The means by which this information
11 should be collected in terms of a provincial direction
12 or guideline, if you will, does not exist at the
13 present time.

14 I might add that guidelines for something
15 like aerial inventory, something that we have been
16 doing for a number of years, were not finalized until
17 the late 70s in terms of a standardized provincial
18 approach. So it shouldn't surprise anyone that the
19 methodology and the standardization of that methodology
20 for habitat inventory does not exist at the present
21 time. It is being field tested in terms of the best
22 means by which to collect this information.

23 Q. You may have stated it - I missed it
24 if you did - you are waiting for the directives from on
25 high. Are you able to advise what the status is as to

1 preparation of those directives, how close are they to
2 finalizing them?

3 A. As I stated, what we are -- what the
4 province is going to do is conduct a workshop in the
5 near future with delegates from all regions, discussing
6 the means by which they have implemented this
7 particular policy and looking at the advantages and
8 disadvantages of different survey techniques that have
9 been field tested to acquire the information required
10 under habitat inventory.

11 Q. So there is nothing more precise in
12 that in developing direction from above other than at
13 some time in the future there will be some workshop
14 with some yet to be determined people directing it and
15 attending at it to develop these strategies; is that
16 correct? It is still a very vague conceptual approach?

17 A. Again, I can only come back to --

18 THE CHAIRMAN: Well, hold on a second. I
19 think you have stated a couple of times there is going
20 to be a workshop, it is going to include all regional
21 directors and you are going to get the input from them
22 and then guidelines will probably be developed.

23 I am not sure, Mr. Williams, if you can
24 go beyond that. He has not got a precise date and I do
25 not think he can give you a precise date as to when the

1 guidelines will be handed down.

2 MR. WILLIAMS: That is what I am saying,
3 in that context it is still a vague undertaking
4 because -- all right.

5 Q. I would ask you to turn to page 308,
6 please, of your witness statement. It says:

7 "The wildlife information for use in
8 timber management planning policy
9 statement that was issued this past
10 June..."

11 Were you involved in the development of
12 this policy directive, Mr. McNicol?

13 MR. McNICOL: A. This is a little above
14 my level.

15 Q. Do you know who in the Ministry was
16 responsible for developing the policy?

17 A. This is head office initiative as all
18 policy direction is. The specific individuals that
19 were involved in the policy formulation, I can't say.

20 Q. From an overview perspective, what do
21 you understand to be the purpose of this policy?

22 A. The purpose of the policy is to give
23 direction to the field with regard to the amount and
24 kinds of wildlife information necessary for use in
25 timber management planning.

1 Q. Is it giving direction to the
2 district manager on which species to consider and what
3 minimum levels of information should be obtained?

4 A. With regard to the featured species
5 and endangered or threatened species, yes.

6 Q. Let me ask you this then: Do you
7 feel that this policy provides adequate direction for
8 these decisions to be made consistently across all the
9 districts in the undertaking?

10 A. With regard to the featured species,
11 moose and deer or threatened or endangered species,
12 yes. But, as you are aware when you read the policy,
13 there is room here for local decisions with regard to
14 species that are of local import with regard to -- in
15 the district manager's opinion. So there is not
16 consistency in that regard.

17 For instance, woodland caribou do not
18 exist across the entire area of the undertaking in all
19 districts, so there is room there for the district
20 manager, if he feels that that should be a featured
21 species or a species of import in his particular
22 district, that allows him the flexibility to allow for
23 the information to be collected with regard to that
24 species.

25 So there is some inconsistency in that

1 regard, but that's a reflection of many species not
2 being universally distributed across the area of the
3 undertaking.

4 MR. WILLIAMS: I thought -- did you want
5 to ask a question?

6 (no response)

7 Q. Are you advising the Board that there
8 is -- given the depth of this policy, that there is
9 considerable latitude with regard to interpretation as
10 to the level of effort that has to be devoted to these
11 various tasks?

12 MR. McNICOL: A. No, not to the level of
13 effort. Again, if we look at the procedural document
14 which goes with the policy, there is an implicit
15 minimum amount of information required for featured
16 species and threatened or endangered species.

17 Q. Let me ask you this: Is it possible
18 to be consistent with this policy and devote either a
19 great deal of effort or minimal effort to collecting
20 this data?

21 THE CHAIRMAN: Mr. Williams, how can one
22 be assured of absolute consistency when a policy
23 specifically allows for diversity or discretion?

24 How can you ever have consistency in
25 every region or every district if, in fact, a

1 particular policy allows a certain amount of
2 discretion?

3 MR. WILLIAMS: With difficulty, Mr.
4 Chairman, I guess that is -- I appreciate that, I am
5 not being facetious, it is not an easy --

6 THE CHAIRMAN: And a further question is:
7 Should policies be rigid, allowing no discretion, or
8 should they have consistency with respect to some
9 things and discretion in others?

10 And that brings up the further question:
11 Is the area of the undertaking completely homogeneous
12 right across the whole area so that you can
13 consistently apply various guidelines right across the
14 board, no discretion, it is all set out and you have to
15 do it in every single area?

16 MR. WILLIAMS: This is certainly the
17 heart of the problem, isn't it, Mr. Chairman?

18 THE CHAIRMAN: But I think the difficulty
19 I am having in following your line of argument is the
20 witnesses have consistently indicated that in certain
21 areas a certain amount of flexibility or discretion is
22 allowed; in other areas there are guidelines set down
23 that have to be applied universally and that is just a
24 fact of these policies.

25 And so to ask them whether or not the

1 policies allow for consistent application across the
2 area of the undertaking, I think begs the existence of
3 discretion set out in these policies. You cannot have
4 consistency along with discretion in certain areas at
5 the same time. I think they are mutually different and
6 at odds with each other.

7 And if you would agree with that - I do
8 not know if you do - but if you do agree with that,
9 then I do not think you can get any witness to come out
10 and say that everything has to be applied consistently
11 across the area of the undertaking and yet, at the same
12 time, can allow for discretion.

13 I do not think the two can exist
14 together. Would you agree with that?

15 MR. WILLIAMS: I think there is the --
16 those two factors that can have to be weighed, that's
17 correct, Mr. Chairman, and it's a difficult balancing
18 act to accomplish.

19 Two factors are the reality of life and
20 given the size of the area of the undertaking and
21 working in the 34 district unit basis, there is bound
22 to be variances that have to be dealt with at that --

23 THE CHAIRMAN: And, for example, I mean
24 the question has been alluded to.

25 MR. WILLIAMS: I am not questioning those

1 basic --

2 THE CHAIRMAN: Well, surveys or studies
3 have to be conducted with respect to very named species
4 and you know perfectly well that certain species are
5 not present in certain areas. Would it not be a waste
6 of resources to conduct those surveys in those areas?

7 MR. WILLIAMS: I am not questioning that
8 at all.

9 MR. MARTEL: Can I ask a question, I am
10 not sure who can answer it, it deals exactly with this.

11 Is there not a cat, one of the cat
12 families mentioned in the material that is rare and do
13 we know anything about it and it makes reference to the
14 point that the Chairman is raising, in that area where
15 this cat exists, is there anything information being
16 gathered to protect it?

17 MR. McNICOL: You are speaking of the
18 eastern cougar, Mr. Martel?

19 MR. MARTEL: I guess that's it, right.

20 MR. McNICOL: The eastern cougar has been
21 reported in a number of locations across northern
22 Ontario and the area of the undertaking. We have no
23 concrete proof of its existence; that is, we do not
24 have an animal that has been killed on the highway,
25 shot by a hunter, trapped by a trapper, photographed we

1- don't have any concrete proof of its existence.

2 We have many people, Ministry employees,
3 trained biologists that have seen eastern cougar in the
4 area of the undertaking. To follow up with your
5 question: Have we done any surveys for eastern cougar,
6 no, they are very afemoral, they are very difficult to
7 pin down as I hope you are getting that message.

8 We do not have any concrete proof of
9 their existence because we do not have any physical
10 evidence, if you will, of its existence, all we have
11 are sightings and they are wide spread.

12 MP. MARTEL: With the minimum information
13 policy that exists, would it protect what cats there
14 are out there, if they existed?

15 MR. McNICOL: If we knew from all of
16 these sightings that in a particular area there is a
17 good likelihood that there were eastern cougar present
18 in terms of breeding population, then we would endeavor
19 to try to find out as much as we could about that
20 particular population in that area of the undertaking.

21 Now, there are some specifics that we do
22 know with regard to their habitat preferences from
23 studies in other areas. We know that they like good
24 deer concentrations, we know that they like rough
25 topography. So these would be areas that we could look

1 for eastern cougar.

2 But to the present time, I don't believe
3 that we have got a concentration of sightings, if you
4 will, in a particular areas that is coming under forest
5 management activity that would dictate the need for a
6 survey.

7 MR. WILLIAMS: Maybe, Mr. Chairman, this
8 would be an appropriate time to take break. I do have
9 a few more questions for Mr. McNicol.

10 THE CHAIRMAN: We will take a 20-minute
11 break. Thank you.

12 ---Recess taken at 10:25 a.m.

13 ---Upon resuming at 10:55 a.m.

14 THE CHAIRMAN: Thank you, ladies and
15 gentlemen. Be seated, please.

16 Mr. Williams, I understand that during
17 the recess an exhibit was tendered.

18 MR. WILLIAMS: Not by me, Mr. Chairman,
19 that I'm aware of.

20 MR. CAMPBELL: Mr. Chairman, that's
21 something that I will be filing this afternoon. I gave
22 it to Mr. Mander--

23 THE CHAIRMAN: Oh, I see, that's not with
24 respect to Mr. Williams. Okay.

25 MR. CAMPBELL: --to file to meet the

1 Board's requirement. It is filed in advance to meet
2 the request that you made the other day.

3 THE CHAIRMAN: We will wait, sorry.

4 MR. WILLIAMS: Q. Mr. McNicol, just to
5 conclude the line of questioning we were engaged in
6 before the coffee break, we have been talking about the
7 balancing act that has to be applied between the
8 exercise of discretion and the need to have a minimum
9 data information base.

10 And the question of exercise of
11 discretion, do you agree that that is a necessary
12 ingredient in the process?

13 MR. McNICOL: A. I do.

14 Q. Is the exercise of that discretion,
15 in your judgment, any way impaired or compromised by
16 reason of limitations of manpower and funding
17 limitations in a district?

18 A. That's certainly a difficult question
19 to answer specifically. I would suggest that it
20 certainly could be in certain situations in some
21 districts.

22 Q. Are you able to elaborate or should I
23 redirect that to Mr. Kennedy or Mr. Clark, the people
24 who have been in the district manager's position?

25 Are you able to elaborate further from

1 your perspective?

2 A. I am speaking hypothetically and just
3 looking at a number of scenarios that could develop. I
4 can't give you a specific example.

5 Q. Mr. Kennedy or Mr. Clark, can you be
6 of assistance?

7 MR. CLARK: A. Could you just repeat
8 your question?

9 Q. Whether, in your judgment, as one who
10 is or has been a district manager, the exercise of
11 discretion has -- the ability to exercise that
12 discretion has in any way been impaired or compromised
13 by the reality of limited manpower and financial
14 resources in exercising your duties and
15 responsibilities at the district level?

16 A. Well, I think my answer is it
17 certainly can be and I think we all know that. If you
18 don't have enough money or staff it makes it very
19 difficult to do a job properly.

20 The point I would want to stress here, I
21 did talk about the budgeting process and the fact that
22 we do establish priorities corporately, regionally and
23 at the district level.

24 Periodically, when instances arise where
25 we determine that we have insufficient data, we have to

1 make from time to time decisions concerning that relate
2 perhaps reallocating funds in order to get more data or
3 in fact seeking out additional funding in order to deal
4 with a particular problem.

5 But in the absence -- you know, the
6 potential certainly exists in certain circumstances
7 that there won't be adequate funding or staff to do the
8 job properly.

9 Q. Is that more likely to occur in the
10 timber management side of the operations or in the fish
11 and wildlife management side of the operation?

12 A. I don't know that I could make the
13 distinction. I would think that it could happen
14 equally depending on the circumstances.

15 Q. Are you saying that on average that
16 both the timber and non-timber management sections of
17 the districts have equal access to management tools and
18 manpower and financial resources to do their part of
19 the job?

20 A. Not in all cases, but I think one of
21 the roles of the district manager is to be constantly
22 vigilant to review those kinds of situations and make
23 the appropriate decision.

24 In other words, an important job that I
25 had as a district manager was to address that

1 particular issue that you have made reference to and it
2 may be that there was a need for additional funding or
3 more effort to be put into fish and wildlife or, on the
4 other hand, for other reasons it might have been, as a
5 district manager, that I had to consider putting more
6 money or effort, if you want, into certain aspects of
7 the timber program narrowly conceived.

8 Q. All right. Just speaking from your
9 own personal experience, where has the shortfall with
10 regard to mustering those resources more frequently
11 occurred; in non-timber or timber management
12 operations?

13 A. I have to think about this because
14 there is an awful lot of operations involved in timber
15 and I am not sure that I could really generalize and I
16 want to make one point clear.

17 If you have limited funds and you have to
18 consider reallocating funds in order to, for example,
19 make more information available, you are often faced
20 with tradeoffs that involve, for example, not planting
21 as many trees, not doing as much site prep, not doing
22 the remedial action that was necessary and all of these
23 decisions, they are not strictly timber decisions, so
24 they become extremely complicated and to generalize
25 about them I think is very very difficult.

1 Q. Well, I asked from your own personal
2 experience are you able to indicate whether there has
3 been a more favourable environment with regard to
4 availability of the resource tools, manpower and
5 funding on the timber management side than on the
6 non-timber management side. That's all I am asking
7 you, from your personal experience?

8 A. I would say that my answer to that
9 would be because, as you have pointed out, the timber
10 program, for example, in my district the funding level
11 was considerably greater, that the possibility for
12 discretionary funding was somewhat -- or exercising
13 discretion in the allocation of funds was somewhat
14 greater in timber management than it was in fish and
15 wildlife where you were dealing with a fairly limited
16 budget.

17 Q. This is in the Wawa District you are
18 speaking of in particular?

19 A. Now, an example would be when you
20 budget for a fairly large site preparation activity and
21 you are funded a certain amount and the quotes come in
22 somewhat lower, you may in fact end of having some
23 discretion with a certain amount of your funds.

24 And a lot of that draws simply from the
25 fact that you are dealing with a larger amount of

1 money. In the fish and wildlife program, it is fair to
2 say in my experience, because the funding levels were
3 generally considerably lower for a whole host of
4 reasons that I think we have made reference to, there
5 was, in my mind, less flexibility.

6 Q. Perhaps if I could focus in a little
7 bit on that.

8 I am alluding to it specifically with
9 regard to which, historically from your experience, has
10 enjoyed the greater benefits of those resources. I
11 relate it specifically to data collection and whether
12 there has been greater opportunity for the all
13 important data collection process of information on the
14 two different sides of the ledger, whether it has been
15 more favourably balanced to timber management
16 operations and activity and sophistication of that data
17 information network than on the fish and wildlife side?

18 A. You know, it is very hard for me to
19 say. I have never really thought of it in this those
20 terms, to be quite frank with you.

21 Q. Is that all you can say?

22 A. I am not sure I can really go any
23 further.

24 Q. Mr. Kennedy, can you assist us?

25 MR. KENNEDY: A. Mr. Williams, I have

1 not been a district manager and I don't think I could
2 respond to those questions.

3 Q. And are you able to respond to them
4 from the positions you have held as a unit forester or
5 say in your particularly key role now as an
6 environmental assessment officer?

7 A. I think if you were to rephrase some
8 of the questions I would be able to provide the Board
9 with some of the insight of the experiences that I have
10 had in one district.

11 Q. Well, the key question was whether or
12 not from your experience at the district level was the
13 allocation of the resources and the assembly of the
14 resources in the form of data information base material
15 more frequently and in greater depth applied in the
16 timber management process as contrasted to the fish and
17 wildlife management side of the operations in your
18 district?

19 A. I wouldn't be --

20 Q. I am sorry, because of limitation of
21 funds and manpower resources in the latter area?

22 A. I wouldn't be in a position to answer
23 that question.

24 MR. CLARK: A. Mr. Williams, I may be
25 able to help a little bit.

1 Q. All right.

2 A. This business of whether or not there
3 is adequate levels of funding and what the relative
4 weights are in timber management versus fish and
5 wildlife has a lot to do with objectives that you set
6 for yourself in terms of the amount of information you
7 are going to collect.

8 And certainly before we had established
9 information requirements for wildlife and for fish, as
10 a district manager or a wildlife biologist it was
11 somewhat difficult to know what you should be striving
12 for and what you should be doing in the absence of
13 having got that information.

14 And one of the ways we have attempted to
15 deal with this basic issue is to try and establish what
16 an adequate level is and what we do in the absence of
17 having that information and so I think that rather than
18 talk strictly about money, relative amounts, I think,
19 you know, from my point of view, it is important to
20 look at it in the context of what we are obligated to
21 collect.

22 And I think -- you know, I am going back
23 to our policy again because I think it is a really
24 important context for looking at this particular issue.
25 In the absence of that policy it was very hard to know:

1 Should we survey all lakes, some lakes, which should
2 have priority, what should we be actually looking at
3 and when it came to wildlife likewise, in the absence
4 of that policy, while there may have been a traditional
5 way of doing things, it wasn't clear specifically on
6 what basis we should establish what our priorities
7 were.

8 Q. Mr. Ward, I am going to ask you the
9 same basic question I asked the other panelists or
10 witnesses and then I am going to ask a series of
11 questions that will require input from yourself and Mr.
12 McNicol dealing with the timber management guidelines
13 and the fish management guidelines.

14 But first, if I might, I will ask you the
15 same question as to, if you could advise the Board as
16 to what professional courses you have received dealing
17 with the four specific areas: Optimization of resource
18 benefits?

19 MR. WARD: A. No official course in
20 that.

21 Q. Integrated resource management and
22 tradeoff decision-making?

23 A. In terms of doing my Masters in
24 natural resources management, we had courses that were
25 related to integrated resource management.

1 The Masters program in natural resources
2 management at the University of Manitoba is an
3 interdisciplinary graduate program which introduces the
4 graduate student to various aspects of resource
5 management including legal things, political things,
6 socio-economic types of decisions, not just the
7 biological information that's required for resource
8 management.

9 Q. So that was part of your academic
10 training and not part of your upgrading process, if I
11 can put it that way, while an employee of the Ministry?

12 A. That's correct.

13 Q. Resource valuation?

14 A. Yes. Again, I have had courses in
15 economics and resource economics and in terms of the
16 Ministry, we are going to be having, I guess within the
17 next year, a fisheries economics workshop.

18 There has been one held at an
19 international level in terms of evaluating fisheries
20 resources and we are going to be having a workshop for
21 training Ministry staff in trying to get more
22 socio-economic information in our fish management
23 decisions.

24 Q. The last area was dealing with
25 uncertainty in making public policy choices?

1 A. I haven't had a professional course
2 in that.

3 Q. Mr. Ward, a point of clarification if
4 I might and perhaps --

5 MR. WILLIAMS: I believe, these two
6 documents; the Timber Management Guidelines and the
7 Fish Management Guidelines were specifically brought
8 forward; were they not, Mr. Freidin to be exhibits in
9 this panel?

10 MR. FREIDIN: I'm sorry, can you repeat
11 that.

12 MR. WILLIAMS: The Timber Management
13 Guidelines for Protection of Fish Habitat.

14 MR. WARD: That's Exhibit 303, Mr.
15 Williams.

16 MR. WILLIAMS: And the Timber Management
17 Guidelines for Provision of Moose Habitat, that's
18 Exhibit 310.

19 Q. A point of clarification, if I might,
20 Mr. Ward. From the questions directed to you last
21 Wednesday, I just want to be clear, did you not say
22 that if no aquatic habitat inventory survey or no fish
23 assessment unit study is done on a lake, river or
24 stream in a given area then the Ministry's Timber
25 Management Guideline for the Protection of Fish Habitat

1 would automatically apply to the area that is under
2 consideration for a timber management plan?

3 MR. WARD: A. Yes, I was referring to
4 the policy statement which is Exhibit 304. It
5 indicates in there that if you don't -- if you have
6 insufficient information for meeting the minimum
7 requirements, what steps you take.

8 Q. That's the policy document that was
9 issued on August the 8th of this year?

10 A. That's correct.

11 Q. I would ask you to turn to the
12 Fisheries Management Guidelines, if you would. I don't
13 think that these documents have yet had an opportunity
14 to be scrutinized and questioned and perhaps it is
15 important that we do so.

16 If you can turn to the two green sheets in
17 the guideline. Am I correct in concluding that these
18 two sheets are the guidelines which are always
19 applicable without variance in lieu of an aquatic
20 habitat inventory survey or a fisheries management unit
21 study?

22 A. Well; you need that minimal
23 information to apply these guidelines. You have to
24 know, for example, whether there is lake trout present
25 in a lake before you can apply the condition that you

1 will have a reserve around a lake trout lake.

2 Q. All right. Let me direct you to
3 paragraph 12 of the guidelines at the top of -- just
4 give me a moment.

5 Paragraph 1 on page 1 of the guideline,
6 it states:

7 "Shorelands which have been selected for
8 timber management operations and which
9 are adjacent to fish habitats for
10 acquiring protection should be identified
11 as areas of concern."

12 Who determines which lakes, rivers and
13 streams require protection?

14 A. I expect it would be the district
15 planning team that's composed of a fish and wildlife
16 representative and I would expect that person, he or
17 she to...

18 Q. How would he or she know that a
19 particular lake requires protection if there is no data
20 that has been developed with regard to that lake, river
21 or stream?

22 A. Well, we would know from the timber
23 management plan and the FRI maps what shorelands would
24 be affected and would have timber allocated to the
25 shoreline and that would immediately identify that

1 areas as an area of concern.

2 And if you don't have any information
3 about that lake, then you automatically put on the 90
4 metre reserve around that shoreline as the policy
5 indicates.

6 Q. Are you advising the Board then that
7 automatically in that situation Table 1 would apply as
8 the minimum protective standards to be applied, Table 1
9 being Timber Management Guidelines for the Protection
10 of Fish Habitat, A Summary.

11 A. Well, that is a summary of the
12 guidelines. Again, if you had no information on slope,
13 you would have to go with 90 metres which is the
14 maximum area of concern. If you had slope information
15 then you can narrow that width down to 30 metres.

16 So, again, there is certain minimal
17 information to use that Table 1 which is outlined in
18 the policy.

19 Q. With regard to using those criteria,
20 the setback distance as you refer to as it pertains to
21 rivers and streams is, just to be clear, is 30 up to 90
22 metres on either side of the stream, so you are
23 actually doubling the reserve area; are you not?

24 A. That's correct.

25 Q. In the next -- in the second

1 paragraph of paragraph 2 of the guidelines it says:-

2 "The above width..."

3 Just following on that point:

4 "The above widths of area of concern are
5 for general use. Where better
6 information is available on a local
7 basis, the widths may be modified in a
8 manner consistent with protection of fish
9 habitat."

10 Can you be more specific as to what the
11 better information available on a local basis would be?

12 A. Just to give you a couple of examples
13 going one way or another. In terms of, if you had say
14 a relatively flat slope between zero and 80 degrees and
15 you were going to prescribe a 30 metre reserve there to
16 protect some critical fish habitat and having some
17 local knowledge about the site that it was in the area,
18 you know, the direction of prevailing winds, the soils
19 weren't that deep, the roots are kind of shallow, they
20 may be subject to blowdown, then you would have a good
21 argument for having a wider width in terms, rather than
22 30 metres going with the 90 metres or maybe a hundred
23 metres or whatever to make sure that that reserve could
24 withstand blowdown.

25 For example, a 30 metre -- it is not

1 unusual to have 30 metre trees and if you have one
2 blowdown it can go right through the reserve width.

3 The other argument as well ain terms of a
4 narrower -- you may have a situation where you can have
5 it narrower than 30 metres, for example, if you have a
6 lot of grass area between the water and where trees are
7 starting, we realize that the grass can provide some of
8 the functions of standing timber in terms of preventing
9 sediment from moving into the water or organic debris
10 or nutrients moving into the water and, therefore, you
11 might not need a 30 metre width, you may be able to get
12 away with a 15 metre width. Or if the slope was
13 steeper, instead of 70 metres, going with 50 metres.

14 So you have to look at those site
15 conditions when you do your prescription and that's one
16 of the reasons why we don't want a cookbook in terms of
17 this situation you apply this width. You have to have
18 some professional judgment on site.

19 Q. Okay. Given that example, is that
20 not all still subject to application of your newly
21 developed policy on use of the Timber Management
22 Guidelines for Protection of Fish Habitat which sets
23 out more specific minimum standard to apply in that
24 process?

25 A. Well, just the examples I have given

1 in terms of relating the width of an area of concern to
2 slope, angle. As I mentioned in earlier testimony, I
3 think that the first draft of the guidelines that came
4 out in 1981 basically had that kind of relationship.

5 If you wanted to protect the aquatic
6 environment, you needed to have this width of timber
7 for these various slopes and it was based on a paper
8 produced by Trimbel and Sartz in 1957 and a lot of
9 agencies across North America have sort of used buffer
10 widths the Trimbel and Sartz study.

11 And so the policy hasn't really affected,
12 you know, that kind of application of having a wider
13 area of concern if you have got a steeper slope.

14 Q. Mr. McNicol, in the Timber Management
15 Guidelines for the Provision of Moose Habitat, are
16 these guidelines applicable in all cases where no
17 previous moose habitat inventory survey has been done
18 for an area being considered for a forest management
19 plan?

20 MR. McNICOL: A. I think as I stated
21 earlier, even if - and it depends on how you are using
22 that word inventory - one of the sources of information
23 that can be utilized to determine whether stands exist
24 that have the potential to hold moose is through the
25 FRI and aerial photographs, if you remember previous

1 testimony.

2 If you consider that as part of the
3 inventory process then, yes, these guidelines would
4 apply anywhere where inventory has taken place.

5 Q. But more importantly, do they not
6 apply where -- they would always apply, would they not,
7 where no inventory has taken place?

8 A. You have to know where to apply the
9 guidelines.

10 Q. And I thought from what is stated in
11 the Class EA at page 188 that it is mandatory to apply
12 these guidelines in all cases?

13 A. Again, you have to have the inventory
14 information to know where to apply the guidelines.
15 And, as I say, that inventory may be as superficial, if
16 you will, as looking at FRI and aerial photographs to
17 identify those areas where the guidelines should apply.

18 Q. Well, isn't this one of the inherent
19 weaknesses of the guidelines. If I direct you to again
20 the green sheet, Roman numeral page II at the top
21 thereof, you were talking about specific areas of
22 concern guidelines it states:

23 "For the protection of identified
24 site-specific habitat components such as
25 early and late winter concentration

1 areas, mineral licks and calving sites,
2 certain guidelines will be applied."

3 Well, given that there has to be a
4 predetermination or there has to be a site that's
5 identified, doesn't this greatly compromise the
6 universality of application of these guidelines?

7 A. I would say not. The identification
8 of certain of these features, for instance, mineral
9 licks and calving sites, if I can speak to the way that
10 those guidelines are applied here in Thunder Bay
11 district and with my conversations with other
12 biologists in other regions, it is impossible to
13 determine, for instance, all calving sites in a
14 particular area of operation.

15 What you do do is extrapolate from the
16 information that you have at hand. We know certain
17 basics about where calving sites exist. Those calving
18 sites are generally approximate to water, they often
19 are on peninsulas or on islands and the way that we
20 apply the guidelines is looking to those areas that we
21 know are good in terms of summer and early winter range
22 and we know we have got good moose populations there,
23 you look for those areas that are close to those areas
24 that have the potential to be calving sites.

25 So you would look for water bodies with

1 peninsulas, you would look for large water bodies with
2 islands. Those would be your potential calving sites
3 and those would be the areas where you would apply the
4 guidelines.

5 Q. Let me refer you to the last two
6 paragraphs on that same page in the right-hand column
7 Application of the Guidelines. It is stated that:

8 "In general if individual harvest blocks
9 do not exceed one hundred hectares,
10 concerns for moose should be restricted
11 to no unspecific areas and they are
12 identified as concentration areas, again,
13 mineral lick sites, calving sites,
14 aquatic feeding areas."

15 Again, I understand what you were saying
16 earlier, but does that resolve the dilemma of the
17 guidelines being only applied on the basis of what is
18 known. Should they not be applied universally so that
19 where they are not known, there is a minimum base of
20 protection provided there prior to the undertaking of a
21 timber management activity?

22 A. Again, I think you have to relate
23 back to the fact that these guidelines are being
24 applied by professional biologists. If you do not know
25 for sure that a particular location is being utilized

1 as a calving site, that does not preclude you applying
2 guidelines if, in your professional judgment, you feel
3 that it is very probable that those sites are being
4 utilized for that purpose.

5 As I explained before, identification of
6 all calving sites in areas where calving has existed
7 would be extremely difficult to accomplish, if not
8 impossible to accomplish for the area that is
9 considered for the forest management activity.

10 So as professionals we apply our best
11 information concerning principles that we know exist
12 with regard to calving sites that have been identified
13 and extrapolate those principles to the land base.

14 Q. I take no issue on that point, I
15 accept that. My concern was whether the guideline, as
16 a document to be applied on a mandatory basis, has to
17 be followed whether or not specific sites are known or
18 identified. That's the major concern I have.

19 So that you have a minimum protective
20 veil, if you will, until such time as necessary studies
21 to determine if it is a site, can be undertaken at the
22 discretion of the district manager or the expert
23 wildlife biologist on staff in that district?

24 A. I can understand your concern. giving
25 the wording, what I am explaining to you is what I do

1 as as professional and what I know other biologists do
2 as professionals, two an two in most cases make four
3 and that's the kind of information, if we know that we
4 have got good moose populations in a particular area,
5 we know that the habitat exists for good calving sites,
6 even though we have not identified specifically those
7 areas as being the calving sites, we apply the
8 guidelines.

9 Q. All right. Last paragraph:

10 "If cuts are proposed which exceed the
11 general guidelines over large areas, the
12 district must receive the regional
13 director's approval prior to agreeing to
14 the plan. If a region intends to
15 routinely sanction deviation from the
16 guidelines, the Assistant Deputy
17 Minister's approval must be obtained
18 before approving the plans."

19 Let's go to the first sentence first:

20 "If cuts are proposed which exceed the
21 general guidelines over large areas the
22 district must receive the regional
23 director's approval prior to agreeing to
24 the plan."

25 To your knowledge, what additional or

1 other data based information or other resource material
2 would be available to the regional director that's not
3 only available over and above what was available to the
4 district manager in making his decision that would
5 compel the regional director to change his opinion from
6 that of the district manager?

7 A. There is no information that would be
8 available to the regional director that would sway his
9 decision one way or the other is my suggestion.

10 The information base that has resulted in
11 a deviation over large areas from the Moose Habitat
12 Management Guidelines or application of those
13 guidelines, that knowledge base is at the district
14 level.

15 So what I am saying, I guess, is that
16 there is no knowledge that I am aware of that the
17 regional director would have upon which to make a
18 decision other than what information he is getting from
19 the district.

20 Q. Given the newness of this program,
21 these guidelines, are you aware of any instances where
22 a regional director has overruled the decision taken by
23 a district manager in this regard, that it was
24 appropriate to exceed the general guidelines in a given
25 instance?

1 A. I am not aware of any such situation.

2 MR. WARD: A. If I can add, Mr.

3 Williams. I am aware of one in the northwest region.

4 Q. What were the circumstance?

5 A. Well, I don't know all the details,
6 but I can just explain to the Board. The region is not
7 getting necessarily more information, what it is
8 bringing into the decision is the opinion of other
9 professional biologists.

10 In other words, there's a regional
11 wildlife biologist, I am the fisheries specialist in
12 the northwest region, we review all timber management
13 plans and we look at them to see whether the moose
14 guidelines and the fish guidelines, when the decisions
15 are being made to approve the plan and we, as staff
16 people for the regional director, are giving the
17 regional director advice.

18 So in the one example in a timber
19 management plan in the northwest region we felt that
20 the moose guidelines were being exceeded in terms of
21 the cut size and the regional director refused to sign
22 the plan until the changes were made, more in
23 conformance with the Moose Habitat Guidelines and the
24 plan was amended.

25 THE CHAIRMAN: Could you not also receive

1 information from other sources like the public or --
2 in other words, is it not possible for the public, for
3 instance, in a particular situation to lobby the region
4 as opposed to the director or lobby even the Ministry
5 as opposed to the director?

6 MR. WARD: That's true. The regional
7 director would have a wider perspective than that of
8 the local scene that the district manager doesn't have,
9 that's correct.

10 MR. WILLIAMS: Q. Would that likely or
11 normally be the case that the regional director would
12 go to outside resources before making a decision when
13 all of this process, as I understand it, is really part
14 of the in-house ongoing operation of the district which
15 doesn't call or rely upon input from the public at
16 large or other outside sources?

17 MR. WARD: A. I think that he basically
18 relies on in-house advice. I mean, there is always the
19 opportunity for -- a regional director is accessible to
20 the public as well and, you know, he has got to balance
21 a lot of different interests.

22 Q. Then as the Chairman has suggested,
23 and are you agreeing that it would be prudent for the
24 regional director in that situation to seek outside
25 professional advice, if necessary, before making a

1 decision given that he has to rely on the same database
2 that the district managers had to do in making his
3 decision?

4 A. Well, in terms of developing the
5 timber management plan at the district level, they have
6 gone through the process of public advice and open
7 houses and that. You know, I expect that most of the
8 opinions of the public would be obtained by the
9 district during their timber management planning
10 process.

11 Q. Well, would that be the appropriate
12 route for the regional director to move in to seek
13 non-professional advice rather than professional
14 outside objective advice?

15 MR. McNICOL: A. No, that would not be
16 the case and, Mr. Williams, with regard to your
17 previous question --

18 Q. Sorry, why would that not be case,
19 Mr. McNicol, please explain, I don't understand.

20 A. Well, the regional director is making
21 a decision based on information that has been supplied
22 to him by his professional staff.

23 Q. Right.

24 A. Now, if you are intimating that a
25 member of the public who is not a professional is able

1 to make a better decision with regard to the way
2 wildlife habitat concerns have been addressed in the
3 timber management planning process, I would have to
4 disagree with that.

5 Q. I am not saying that. Wouldn't it be
6 more prudent -- if the regional director felt he
7 couldn't fairly understand the reasoning for which the
8 district manager decided to exceed the guidelines,
9 wouldn't it be more prudent for him to go to
10 professional outside advice rather than to lay people
11 for their advice through the public consultation
12 process?

13 A. Perhaps part of your concern with
14 this question is the regional director's role in this
15 process. See, the regional director's role, if he
16 feels that there is justification for going beyond a
17 particular provincial policy or disregarding a
18 particular provincial policy with justification, then
19 it is only his mandate to do that. The district
20 manager cannot do that, only the regional director can.

21 Q. I will move on by simply trying to
22 distinguish which is the most appropriate source of
23 outside information that he should seek after,
24 professional or lay advice?

25 A. Well, the simple answer to that

1 question, if he feels that is a necessity, then
2 obviously a professional opinion.

3 Q. Thank you. The other concluding
4 sentence seems to potentially compound a problem that
5 appears to exist certainly on the surface, perhaps you
6 could clarify. If a region intends to routinely
7 sanction deviation from the guidelines, the Assistant
8 Deputy Minister's approval must be obtained before
9 approving the plans.

10 Again, what resource material or other
11 information would he be likely to have over and above
12 what the district manager and the regional director had
13 in deciding to routinely sanction deviations from the
14 guidelines, how is he able to cope with that situation
15 if he has no other advice -- or information,
16 professional documentation, information than what the
17 other two parties had?

18 A. At that level the ADM would be
19 looking for advice from his provincial experts rather
20 than the regional coordinators at the regional level,
21 he would be looking for advice from his provincial
22 experts in regard to that particular situation.

23 MR. MARTEL: Can you tell me how you
24 could do it at the district level, get a decision based
25 on the best information available to you from your

1 professional staff, go through the regional level, the
2 typical example that you would have that ultimately
3 would end up routinely on the Assistant Deputy's desk.
4 I mean, the type of judgment calls that you have
5 indicated all a long would indicate that that couldn't
6 occur.

7 MR. McNICOL: I agree and I am not
8 cognizant of any example of that taking place.

9 MR. WARD: I am only aware of the one
10 example I gave.

11 MR. MARTEL: And that was at the regional
12 level and didn't get to the ADM.

13 MR. WARD: That's correct.

14 MR. MARTEL: Would why that would be in
15 there because it talks about routinely doing the
16 deviation. I mean, that isn't a routine; is it, it
17 isn't something you do routinely, deviate from the
18 guidelines?

19 MR. McNICOL: I can think of an example
20 where that may take place and that would be in a
21 situation where a district, say, has woodland caribou
22 populations. If you look at the guidelines for
23 woodland caribou, they specify quite large cuts. This
24 is the type of disturbance that can bring back good
25 woodland caribou habitat in time.

1 That would require deviation from Moose
2 Habitat Management Guidelines on a routine basis, if
3 the decision was made by the district manager at his
4 level that woodland caribou were going to be featured
5 in his particular district or is a species of specific
6 concern in his particular district.

7 So that would be one situation where
8 there would be routine deviation the from Moose Habitat
9 Management Guidelines. So what it would call for is
10 some justification for that particular course of
11 action.

12 MR. MARTEL: That hardly sounds to be
13 routine though.

14 MR. McNICOL: No. And, again, in my
15 experience, I don't know of examples where the Moose
16 Habitat Management Guidelines have been routinely
17 ignored. I gave that as a hypothetical example of
18 where that might happen.

19 MR. WILLIAMS: Mr. Chairman, I would just
20 like your guidance, if I might. How much time remains
21 to me in your allocation? Are we going to twelve or
22 12:30 or whatever, I can adapt to --

23 THE CHAIRMAN: Well, I think we would
24 like you to complete your examination so that after
25 lunch we can start with Mr. Campbell's and...

1 MR. WILLIAMS: 12:30.

2 THE CHAIRMAN: 12:30 would be fine with
3 us if you can complete by then.

4 MR. WILLIAMS: We can't, but we will.

5 All right, Mr. Chairman, that's helpful. Thank you. I
6 just have to be more selective as to questions.

7 Q. Just one question there, Mr. McNicol,
8 just so I am clear or perhaps let me put it this way:

9 Given that everybody is working with the
10 same database and wouldn't it be more appropriate where
11 there was a doubtful situation for the district manager
12 to enter into the consultant process with the regional
13 director or if needs be the Assistant Deputy Minister
14 along with the regional director before than after
15 exceeding the regional guidelines?

16 If he realized it was contrary to the
17 guidelines, clearly there must be an exceptional
18 situation. Wouldn't it be more appropriate that the
19 consultation process occur before and not after.

20 MR. McNICOL: A. And indeed with the
21 review process that is set up for the timber management
22 planning process, there is review by regional
23 coordinators both in fisheries and in wildlife before
24 plan finalization. So that concern would be brought to
25 bear before finalization of that particular plan and

1 the problem would be addressed before final approval in
2 most situations. All situations that I am aware of.

3 Q. Just one last question with regard to
4 the guidelines, if I might. I just want to be
5 absolutely clear that -- is this a correct assessment:
6 That indeed where there is no site-specific data or
7 information to deal with the protection of the habitat,
8 whether it be fish or wildlife, when contemplating a
9 timber management -- a forest management plan, am I
10 correct that these guidelines would apply and that
11 their application is governed by the two policy
12 directives that have been issued this year; the one
13 being Wildlife Information for Use in Timber Management
14 Planning the other being for fish?

15 A. If we could look at the specifics,
16 when I talked about calving areas in terms of specific
17 habitats of concern.

18 Q. Yes.

19 A. I think those are the words that gave
20 you some trouble.

21 Q. That's right.

22 A. When we talked about known.

23 Q. Right.

24 A. I picked calving areas specifically
25 because that is the area where our information would

1 be, in terms of specific locations, the most difficult
2 to procure because understand that calving occurs over
3 a very short time frame and it would be extremely
4 difficult to identify those sites specifically over the
5 entire of the forest management activity.

6 However, the other sites, mineral likes,
7 aquatic feeding areas, these are areas that are used
8 traditionally over time and are relatively easily
9 identified where they exist. So my choice of calving
10 areas was done specifically to indicate that in those
11 situations, even though we do not know where the
12 specific sites are, we will protect the potential
13 sites.

14 Q. Mr. Ward, with regard to the policy
15 directive issued in August of this year as to applying
16 the timber management -- or the forest -- the Fisheries
17 Management Guidelines, am I correct in that your task
18 is somewhat simplified in that the directive clearly
19 states that the minimum data that is to be obtained is
20 that set out in the Manual of Instructions for Aquatic
21 Habitat Inventory Surveys where there is no other data
22 or information available to make a professional
23 judgment as to the possible negative impact of timber
24 management activity and in a given lake, stream or
25 river area?

1 MR. WARD: A. That's a long question. I
2 guess my answer is yes.

3 THE CHAIRMAN: That's a good answer.

4 MR. WILLIAMS: Q. Well, just before -- I
5 am not going to let you off that easy. Just turn to
6 page -- of the new policy that's been established,
7 because it is clearly stated as I see it in No. 2.

8 MRS. KOVEN: What exhibit?

9 MR. WILLIAMS: This was entered as
10 Exhibit 304 and I am looking at the second last --
11 sorry, I am looking at the second page under Section
12 (e) -- no, I am sorry under the heading minimum
13 information requirements, Item 2.

14 Q. So that's your authority for saying
15 that you must, at the very minimum, undertake that type
16 of survey; is that correct, all other information being
17 lacking?

18 MR. WARD: A. That's correct or that
19 policy suggests that it is the way to obtain that
20 information. If you look at point 4 just below it, it
21 gives the three areas of information that we need, goes
22 from page 2 to page 3, on fish species and gives some
23 examples of the ways of collecting that information.

24 Q. Again, just one last question here
25 staying with paragraph 2:

1 "The use of any other survey method must
2 be approved by a Ministry fisheries
3 biologist professionally."

4 Is there any other way of doing adequate
5 professional surveys to assemble the type of
6 information you are talking about and, if so, is it
7 more or less adequate than what you would obtain
8 through an aquatic habitat inventory survey?

9 A. Well, I was trying to explain in the
10 Section 4 gives some other examples of how you can
11 collect the information and, in actual fact, for
12 example, on lake surveys in the manual we don't really
13 talk about lectro fishing used as tool for collecting
14 fish species present in lake surveys, we do for stream
15 surveys.

16 But now that we can use -- some regions
17 have lectro fishing boats, it is possible to collect
18 fish species as well with lectro fishing for lake
19 survey cruise to identify the fish species that are
20 present.

21 So in some ways the manual sort of
22 outlines some techniques and under point 4 it outlines
23 some others that are, in actual fact, in addition to
24 what the manual lays out.

25 Q. And in your professional opinion

1 those other approaches are equally acceptable
2 professionally?

3 A. Yes.

4 MR. WILLIAMS: Thank you. Coming to,
5 Mr. Pyzer, if I might there is an area I would like to
6 explore with you, but again with your indulgence, Mr.
7 Chairman, I just want to put the common question that I
8 put to the other panelists.

9 Q. Can you advise the Board as to what
10 professional courses during your tenure as an employee
11 of the Ministry of Natural Resources, what professional
12 courses you have received dealing with these four
13 areas: Optimization of resource benefits?

14 MR. PYZER: A. Mr. Williams I don't have
15 my curriculum vitae in front me and I have taken a
16 large number of courses, so I may be missing some here.
17 I think they are all listed though in that document,
18 but same as Mr. Ward, I have a Masters degree from the
19 Centre for Resource Development.

20 Q. I am not asking about academic
21 qualifications attained prior to becoming an employee
22 of the Ministry, I am asking asking about professional
23 courses provided by your employer for better
24 understanding these highly technical and complex
25 issues. If I missed them in your CV, I apologize, but

1 I don't recall seeing that material in your CV.

2 MR. PYZER: A. Okay. Optimizing
3 resource benefits. I did take a week-long course at
4 the Banff Centre on environmental impact assessment.

5 Q. The same one as Mr. Clark did?

6 A. No, a different one. This was the
7 forerunner to the one Mr. Clark attended.

8 Q. So it is a more specific one dealing
9 with optimization and not with the broader issue of how
10 to--

11 A. That's correct.

12 Q. --handle yourself in a Class EA
13 hearing?

14 A. I believe it was more specific.
15 That's correct.

16 Q. Is that the one instance?

17 A. Pardon me?

18 Q. Is that the single instance or are
19 there others?

20 A. Optimizing resource benefits and
21 certainly to a degree, the courses in terms of
22 constructive citizen participation.

23 Q. That's the only professional course
24 you have engaged in. Have there been other specific
25 courses you have taken on that particular topic? Just

1 yes or no?

2 A. Yes, I believe there are others. I
3 believe the constructive citizen participation course
4 that I was on and also the interpersonal communication
5 course both dealt with at least methods or ways of
6 arriving at optimizing resource benefits.

7 Q. Were they one-day or one-week
8 courses?

9 A. I believe they were, in both cases,
10 three days. I would also guess that the native studies
11 course -- to a large degree the native studies course,
12 actually I took two of those, one at York University
13 that Andrew Ricard presented and other one that was put
14 on, it was a week-long course in Dryden.

15 I would say both of those also from an
16 Indian perspective that was optimizing resource
17 benefits.

18 Q. The three other types of professional
19 courses I want to ascertain whether have been made
20 available to you and, if so, whether you have taken
21 them is in the areas of integrated resource management
22 and tradeoff decision-making?

23 A. Probably the one that was most
24 specific would be that environmental impact assessment
25 course at Banff and another one that --.

1 Q. The same one that Mr. Clark was on?

2 A. No, again, it was the forerunner to
3 it.

4 Q. The one that you were on. All right.

5 A. And another one that Ministry put on
6 in Dryden, it was handled by a consulting firm, Huff,
7 Stansbury and Associates and it was on basically that
8 very subject.

9 Q. Resource valuation?

10 A. Again, the environmental impact
11 assessment course in the Huff, Stansbury.

12 Q. All right. And lastly dealing with
13 uncertainty in making public policy choices, were they
14 part of the agenda in those courses as well?

15 A. I would say most if not all of the
16 previous ones that I have mentioned, yes.

17 Q. Mr. Pyzer, as a Ministry expert
18 witness on resource management, do you feel that you
19 are best equipped to answer questions on socio-economic
20 environmental data?

21 A. I will certainly try.

22 Q. All right. I would like to ask you a
23 few questions about where your Ministry collects data
24 with regards to socio-economic environmental issues.

25 Do you agree that fish and wildlife

1 management has a rather large people management
2 component?

3 A. Yes, I do.

4 Q. In order for the Ministry to properly
5 address the needs and desires of resource user groups,
6 it is my understanding that your Ministry often
7 undertakes to solicit input from the public to receive
8 guidance in developing such things as park management
9 plans, timber management plans and even fish and
10 wildlife management plans; is that correct?

11 A. That's correct.

12 Q. And would you agree that this in fact
13 is really central to dealing with the socio-economic
14 concerns that you have a high intensity of public
15 participation in dealing with those issues?

16 A. Yes, I would agree with that.

17 Q. Now, in order to ensure that
18 professional unbiased surveys are done in this regard,
19 who does your Ministry have on staff that serves as a
20 social science expert or as a sociologist, if you will,
21 to ensure that the wants and needs of the public are
22 properly addressed and reflected by the many Ministry
23 resource management programs?

24 A. Very good question. The reality is
25 that there is not a sociologist as such on the Ministry

1 staff. Certainly the test -- the social test, if you
2 will, is the public test in terms of the public
3 consultation and we certainly relied on that as being
4 the social test, the fact that, as you indicated, that
5 we do meet with the various anglers and hunters groups
6 both at the provincial, regional, district levels, that
7 we do get their input, that they do attend the various
8 information centres, that they do participate on our
9 planning teams, advisory committees, if you will, and
10 task forces. We believe that that is the social test.

11 Q. I am not questioning that this may be
12 the social test, but I am inquiring about whether or
13 not, in your judgment, we have reached the necessary
14 level of sophistication in dealing with these complex
15 socio-economic issues to be able to continue to deal
16 with them without the benefit of specialists in the
17 field such as sociologists in the same way we have
18 biologists and people trained in forestry techniques at
19 a high level that we should -- when are we going to
20 reach that situation in dealing with the people issues?

21 And in asking that question, I am not
22 denegrating the qualifications you have, sir, I am
23 simply asking: Isn't there a need for a higher level
24 of professionalism to be applied in that area?

25 A. If you are asking for my professional

1 opinion?

2 Q. Yes.

3 A. It would be some time before given
4 the money to hire new staff that I would hire a
5 sociologist.

6 Q. That is not my question, I didn't ask
7 you if you don't have the money or staff. I am asking
8 you if that's not the necessary direction to move in
9 and, if not, why not? Why has it not been done to
10 date; is it because of the financial and staff
11 limitations?

12 A. I don't believe that is the reason
13 why.

14 Q. What is the reason?

15 A. I guess the reason, I suppose it's
16 fairly obvious, the reason is that the Ministry, in
17 terms of having dealt with those problems, hasn't felt
18 the need to hire a sociologist; that in fact in dealing
19 with those groups, the client groups that the decisions
20 that have been made have met with general favourable
21 reaction and that need has not been identified.

22 I can honestly say it is the first time I
23 have heard someone suggest that we should, from any of
24 our groups, hire a sociologist.

25 Q. Is there no such professional person

1 even above the district level -- within this huge
2 operation of the Ministry of Natural Resources, is
3 there no such person as a sociologist on staff to
4 assist the districts in doing the necessary
5 interpretative work and collection and analysing
6 information necessary to make these decisions?

7 A. Certainly there are. You know, there
8 are -- like the policy secretariat and various branches
9 at main office that assist us in those kinds of issues.
10 Unfortunately, I don't know what their qualifications
11 are, but in terms of a staff sociologist identified as
12 a sociologist, I don't know of one in the Ministry.

13 That is not to say again that we don't
14 have those branches that assist us in dealing with --
15 if a complex problem like that arose that we wouldn't
16 turn to, but I don't know what their qualifications
17 are.

18 Q. Mr. Clark, can you assist us, do you
19 know if there are any professional sociologists on
20 staff either at the district levels or at the head
21 office level that can assist the districts in this
22 whole important area of their operations?

23 MR. CLARK: A. Maybe I can turn it
24 around because I am not sure just what you are talking
25 about when you say a sociologist, I am not sure what

1 role you are asking them to play.

2 Q. Surely to develop and define the
3 interests of the resource users as contrasted to the
4 resource itself.

5 A. My answer then is that we don't have,
6 to my knowledge, a staff sociologist on staff at the
7 present time. We do have a number of people on staff
8 particularly in main office who have a considerable
9 amount of expertise in the development of techniques
10 for consulting with the public and those techniques are
11 not strictly by any stretch of the imagination the
12 domain of sociologists.

13 I think that is extremely important to
14 note. The processes that we develop for consulting
15 with the public are not made in a vacuum and certainly
16 I don't think we would limit ourselves to talking
17 strictly to sociologists if we wanted to find out the
18 best way to conduct open houses or the best way to
19 develop questionnaires or the best way to do
20 appropriate statistical analysis or sampling, I think
21 we would cast and do cast our net far wider than that.

22 And it is not possible for an
23 organization of our type to have one of everybody and I
24 think at this point in time we have chosen to put our
25 emphasis in the areas where you can see it is clearly

1 demonstrated and we use other people as they are
2 required.

3 MR. PYZER: A. I would emphasize too,
4 Mr. Hunter, in terms of that question that where the
5 need --

6 Q. Mr. Hunter was here yesterday?

7 A. I am sorry, I apologize.

8 Q. I don't even look like him, he is
9 bigger than I am.

10 A. Where the need has been identified we
11 certainly, I believe, have hired outside expertise. I
12 think you are going to hear from the ESSA group in an
13 upcoming panel and I believe they have worked on hunter
14 surveys and worked with the Ministry in preparing them.

15 So like where that expertise was required
16 I can think of ESSA as one example, I can think of
17 Econometrics as another consulting firm that we have
18 hired. Certainly Huff, Stansbury and Des Connors and I
19 believe Mr. Connors is a sociologist.

20 We have retained him I think at least two
21 occasions in terms of training courses. I was on one
22 of them myself. So I guess where we have identified
23 that the need existed we have hired that outside
24 expertise.

25 THE CHAIRMAN: Mr. Williams, what is a

1 sociologist going to do? What is the purpose of a
2 sociologist and why, as opposed to a sociologist, would
3 you not want a psychologist or maybe an anthropologist?

4 MR. WILLIAMS: I guess for the same
5 reason, Mr. Chairman, that in the wisdom of Ministry
6 they decided it prudent to hire professionals such as
7 biologists and zoologists to deal with their resources
8 themselves in the same fashion.

9 It seems to me that there could be a
10 degree of improvement in the system with the extent of
11 providing a higher level of sophistication to the
12 system which may, in your judgment, may or may not
13 improve the process as far as dealing with the people.

14 THE CHAIRMAN: But what would a
15 sociologist actually do? Okay. Let's say they have
16 got one, now what would the sociologist actually do?

17 You have got a timber management plan
18 ready to be developed and approved. Where would the
19 sociologist fit in?

20 MR. WILLIAMS: I don't -- I think, Mr.
21 Chairman, that again the sociologist would be looking
22 at the overall undertaking relative to the diverse
23 interests, particularly as they relate to the resource
24 users and beyond that.

25 THE CHAIRMAN: What is he going to do?

1 Is he going to go out and conduct a survey; is he going
2 to bring to the exercise some academic studies on what?

3 MR. WILLIAMS: I presume, as a
4 professional, that they would be able to make a greater
5 contribution to making those assessments and
6 determinations, Mr. Chairman. I have asked the panel
7 whether the system could not be better improved by
8 bringing on board someone who has professional status
9 in nature and --

10 THE CHAIRMAN: Are you going to be
11 calling evidence to show that a sociologist would
12 further the process? Are you planning to call a
13 sociologist for example, to indicate how --

14 MR. WILLIAMS: That determination hasn't
15 been made, Mr. Chairman, until we heard what answers we
16 get from the staff. I simply wanted to know what the
17 status was, whether they had --

18 THE CHAIRMAN: Well, either (a) they do
19 not have one, they have established that.

20 MR. WILLIAMS: That's fine. That's the
21 purpose of the cross, to determine whether they see the
22 need for that type of professional input into the
23 process and if they're -- I can't think of a better
24 area in which the need would exist, if the need.
25 That's all.

1 MR. MARTEL: Can I raise a question
2 because I have some sympathy, particularly when you
3 deal with one industry towns and the effects of closing
4 down a one industry town whether it be the Town of
5 Burwash which closed down a correctional institution
6 and a couple of staff committed suicide; or a one
7 industry town that relies primarily on a resource-based
8 industry and the consequences of a decision which in
9 fact could result in everybody losing their home
10 because there is no more jobs there. It is the problem
11 of northern Ontario.

12 I think Mr. Williams raises a valid
13 concern in terms of the impact of an adverse decision
14 which could ultimately result in a one industry town
15 going down the tube.

16 MR. PYZER: Mr. Martel, I would agree
17 with that and one example that I can think of in fact
18 is Ear Falls and any time that we deal with those kinds
19 of situations, I think your point is extremely well
20 taken, we generally - if we are the lead Ministry,
21 which we are usually not in a situation like that - we
22 are one of several ministries that gets involved in
23 those discussions and Ear Falls is probably a good
24 example where all of the ministries that would deal
25 with those kinds of issues are involved, we be being

1 one of them.

2 And certainly those ministries that have
3 those skills specifically to them from both a social
4 and economic perspective and certainly far better than
5 we can are represented on those task forces, those
6 committees, those interministry groups.

7 I think your point is extremely well
8 taken.

9 MR. MARTEL: Was there a sociologist on
10 the task force led by Jack Stokes -- involving Jack
11 Stokes that dealt with the Ear Falls situation and the
12 report which was submitted to the government about 18
13 months ago I think.

14 MR. PYZER: I know there were many
15 ministries involved in it. I don't know who the
16 individuals were.

17 MR. MARTEL: See, we are in a field
18 here, I think we are considering a field where in fact
19 decisions could very adversely affect a family or a
20 group of families who in fact see their entire
21 livelihood with a stroke of a pen wiped out.

22 One industry towns face a situation that
23 no other communities in southern Ontario I think would
24 face because of distance and so on, so it is valid, I
25 think.

1 MR. CLARK: I think the point we are
2 making, Mr. Martel, is that we don't deny that that
3 potential -- that kind of a problem can exist. I was a
4 district manager in a single industry town and it was a
5 town that in pretty bad shape when I was there and we
6 went through that problem. It happened that it wasn't
7 the forest industry, it was the mining industry.

8 But in that particular case we were very
9 much involved in that decision-making process, but as
10 Mr. Pyzer points out, so was the Ministry of Community
11 and Social Services, and the people -- the agencies
12 that had those particular skills played a very vital
13 role in it and, of course, we relied on them to provide
14 that input.

15 And the point I would make in a more
16 general way is that the same rule applies in the
17 context that Mr. Williams is talking about. We don't
18 have a sociologist on staff. I don't think
19 sociologists are the only people that necessarily know
20 about how to consult with the public or how to
21 determine what their values are or how to consolidate
22 that information.

23 I think, as a rule, we make reference to
24 whoever we feel can help us in those kinds of
25 situations in the same way that if we are dealing with

1 archaeological resources we deal with the Ministry of
2 Citizenship and Culture; if we are dealing with water
3 quality concerns, we deal with MOE. There is a limit
4 to the amount and we tend to focus on those activities
5 that most clearly relate to our mandate.

6 MR. WILLIAMS: Q. Mr. Clark, in that
7 regard - and you made the point earlier - that dealing
8 with the people issues, so to speak, that is not the
9 exclusive domain of the professional sociologists to be
10 able to grapple with those problems, that's the point
11 you make and perhaps the other specialized professional
12 areas are not the exclusive domains of the biologists
13 and the zoologists and ecologists that the Ministry may
14 retain on staff or by way of consultant services.

15 That may be, I don't argue that point.
16 What I am asking you is whether the process would be
17 assisted if staff professionals such as Mr. Pyzer in
18 dealing with those socio-economic issues would be
19 assisted by the injection of additional professional
20 support in the nature of a sociologist or sociologists
21 at either the district or higher levels of the
22 Ministry's operation.

23 That's simply the bottom line, whether
24 they could help improve the process or would they be
25 detrimental to the process, because it is just adding

1 another layer of professionalism to the process.

2 MR. CLARK: A. Well, my opinion would be
3 that they would not be essential and that the way that
4 we do and should deal with it is that you consult with,
5 for example, other ministries that have that expertise
6 and would normally represent those kinds of interests
7 and we do that through the timber management planning
8 process.

9 Q. Sorry, just one last question on this
10 point. I guess it comes to the bottom line and what we
11 are trying to get at: Are not such qualified
12 professional people needed to ensure that bias is
13 removed from the data information collecting process
14 including the conducting of open houses and the
15 dialogue with the public at large?

16 THE CHAIRMAN: Will the bias be removed,
17 in your opinion, Mr. Williams, if the sociologist if
18 that is the person we are talking about, were Ministry
19 staff?

20 MR. WILLIAMS: If they were applying
21 their professional expertise, I would assume it would
22 be essential that they bring no bias into their
23 application of their talents.

24 MR. CLARK: My answer once again is no.
25 We don't have a sociologist I don't believe running the

1 Environmental Assessment Board. We don't have to
2 have --

3 THE CHAIRMAN: Well, you didn't know that
4 for a fact.

5 MR. CLARK: I have a feeling. I guess
6 the point I am making here is that it is not uncommon
7 to have people in positions where they are asked to
8 make decisions based on a review of a wide range of
9 different types of information.

10 I am not sure specifically what you mean
11 when you talk about a sociologist in the specific role
12 that they would play at any rate. I get back to the
13 point I made earlier. We are, as an agency, very
14 concerned about the way we collect data, the various
15 forums or tools that he use for collecting data. We
16 have consulted extensively in the development of those
17 tools and we have relied on a wide variety of
18 specialists to give us good advice concerning sampling,
19 concerning content analysis, concerning the way to hold
20 open houses, concerning the way to facilitate dialogue.

21 And to focus on one specific professional
22 discipline, I think would be limiting ourselves in an
23 undesirable way.

24 MR. WILLIAMS: Q. All right. Then this
25 will be my last question on this topic. Short of

1 having a professional of that nature within the
2 district level or above, does the Ministry have a
3 formal policy to ensure that a uniform unbiased
4 approach is used regarding survey design,
5 implementation and analysis in the undertaking of your
6 timber management planning?

7 MR. CLARK: A. No, not in the way that
8 you have said it. What we have is a timber management
9 planning process that provides a consistent method for
10 contacting the various affected public, for summarizing
11 their concerns and for developing and documenting
12 prescriptions that deal with those concerns.

13 Q. Mr. Kennedy, if I might just in the
14 time that's remaining to us -- sorry, Mr. Kennedy, I am
15 just going to back up just before I come to you.

16 All right. Following up on your answer
17 to my last question, Mr. Clark. If I can just ask you
18 this one further question: How do you deal with
19 potential bias if you have no one qualified to
20 recognize its existence?

21 MR. CLARK: A. I don't really know exactly
22 what you are talking about. I think you would have to
23 speak to some examples for me so that -- I am not
24 trying to avoid the question here, I would be glad to
25 answer it, but I am not just sure what you mean.

1 Q. That probably takes us back to the
2 beginning of my questioning of yourself the other day
3 when I believe you acknowledged in evidence that a bias
4 can prevail based upon the disciplines from which you
5 are experienced in and coming from?

6 A. Well, I think the answer - and I
7 think I have given it on a number of occasions - is
8 that we do have a standard approval process -- review
9 and approval process that we rely on and a standard
10 planning review and approval process which is really
11 the subject of this whole exercise.

12 THE CHAIRMAN: We are not going to review
13 that.

14 MR. CLARK: No.

15 MR. WILLIAMS: Q. And that's designed to
16 avoid the weighting of things through application or
17 because of biases that people might bring to the
18 process?

19 A. Very much so. As I pointed out, we
20 make recommendations at the district level which are
21 then subject to detailed scrutiny at the regional
22 level, which are then subject to scrutiny at main
23 office and...

24 THE CHAIRMAN: And all of that is going
25 to be scrutiny by us.

1 MR. CLARK: Yes. Enough said.

2 MR. WILLIAMS: Yes.

3 THE CHAIRMAN: Well, Mr. Williams --

4 MR. WILLIAMS: One last question.

5 THE CHAIRMAN: No, no. I mean, I hope
6 you will appreciate that we have been through that
7 particular aspect--

8 MR. WILLIAMS: Extensively.

9 THE CHAIRMAN: --of what their planning
10 process is so as not to make it necessary, at this
11 point to go through it again. We are not trying to
12 obviate your question, but --

13 MR. WILLIAMS: I don't intend to. I took
14 it as far as I wanted to go.

15 Thank you.

16 THE CHAIRMAN: Okay.

17 MR. WILLIAMS: Q. Mr. Kennedy, in the
18 few moments left to us, I just wanted to get a further
19 clarification again with regard to a line of
20 questioning I developed with you the other evening
21 dealing with wetlands, wetland drainage and treed swamp
22 drainage.

23 And I just want to be clear as to whether
24 or not wetlands and those issues of wetland drainage,
25 swamp drainage are in fact a part of this Class EA,

1 given that they have not been raised in evidence in
2 chief anywhere that I can find.

3 MR. FREIDIN: Mr. Chairman, I can advise
4 that drainage is not considered to be part of timber
5 management for the purposes of this Environmental
6 Assessment.

7 MR. WILLIAMS: Q. Given the evidence put
8 forward the other evening, it was my understanding, Mr.
9 Kennedy - you will correct me if I am wrong - that
10 timber management has been conducted in the past in
11 areas not heretofore available to those who conduct
12 timber management undertakings, other than areas that
13 have been drained for the specific purpose of enlarging
14 the geographic areas in which timber harvesting can
15 take place, including peat bogs and other wetland
16 areas; is that not correct?

17 Wasn't that what was stated in the
18 Walleye Creek Development project?

19 MR. KENNEDY: A. I believe what was
20 stated was that that was a demonstration project to see
21 the feasibility of doing that kind of an operation and
22 determine the economics involved.

23 Q. Did you not say that there had been
24 other instances where timber harvesting has gone on on
25 lands having the same characteristics as those

1 contained within the Walleye Creek demonstration
2 project?

3 A. I don't recall saying that.

4 Q. To your knowledge as a unit forester,
5 have there been instances where, in a timber management
6 plan, the party granted those rights has been given the
7 rights to harvest timber from the type of areas as
8 described in the Walleye Creek project?

9 THE CHAIRMAN: Well, as I understood it,
10 Mr. Kennedy, in the brief mention of the Walleye Creek
11 project last week, there wasn't any harvestable timber
12 within the swamp areas; is that not correct, of a size
13 that would make it economically feasible?

14 MR. KENNEDY: I believe that's the case,
15 yes. As I stated, I have not been on the site of the
16 Walleye Creek project.

17 The information that I had I made the
18 Board aware of and then, Mr. Williams, you provided the
19 additional fact sheet, I believe it was. I am not
20 aware of any place where drainage activities have been
21 undertaken as part of a timber management plan.

22 MR. WILLIAMS: Q. All right. Well, very
23 simply, Mr. Kennedy, has your Ministry as a matter of
24 practice and policy allowed companies in the timber
25 management area to harvest trees in this type of

1 geographic environment, topographical environment--

2 MR. KENNEDY: A. I am sorry, Mr.

3 Williams...

4 Q. --involving swamplands?

5 A. I think you would have to be more
6 specific in your question in order for me to answer.

7 Q. Well, surely it simply requires a yes
8 or no answer. Either the Ministry has allowed
9 harvesting of trees in areas that can be defined as
10 swampland or they haven't?

11 THE CHAIRMAN: Or he doesn't know which.

12 MR. WILLIAMS: Well, then if he doesn't
13 know, yes. But who can provide us -- well, let's see
14 if he does know.

15 Q. Do you?

16 MR. KENNEDY: A. I think, Mr. Williams,
17 I think it would be best to wait until Panel 10 and ask
18 that question of those individuals that will be giving
19 evidence on harvest.

20 THE CHAIRMAN: Are you saying you can't
21 answer that question, is that what you are saying?

22 MR. KENNEDY: Yes.

23 MR. WILLIAMS: Mr. Freidin, Mr. Kennedy
24 is suggesting that the answer and the expertise would
25 be available in Panel 10. Are you able to advise that

1 there will be expert witnesses there that can deal with
2 this wetland issue?

3 MR. FREIDIN: Yes, there will be
4 witnesses that can deal with this issue.

5 MR. WILLIAMS: Q. Just one last question
6 then, if I might, Mr. Kennedy, given that you can't
7 give me the specific answer.

8 But if in fact the Ministry had allowed
9 such activity to take place on swamplands, whether it
10 was established as a matter of policy or as isolated
11 instances, would that not then make the matter of
12 timber management and wetlands an integral part of this
13 Class Environmental Assessment and the question of
14 actual or potential impact of one upon the other of the
15 activity upon the resource?

16 MR. KENNEDY: A. Mr. Williams, I am
17 somewhat puzzled by the question. I believe in your
18 discussions last week concerning wetlands with Mr. Ward
19 I believe the evidence was that it would be unlikely to
20 have trees growing on the aquatic wetlands as were
21 described by Mr. Ward.

22 Q. But in my earlier question to you,
23 you didn't know whether in fact there were trees
24 growing in wetland areas.

25 I am saying to you if it is demonstrated

1 or shown that in fact timber has been growing in
2 wetland areas and has been allowed to be harvested in
3 those areas, then do not wetlands become very much a
4 part of this Class Environmental Assessment and, if so,
5 should they not have been identified in
6 evidence-in-chief to be addressed and the problem
7 associated therewith considered..

8 MR. FREIDIN: Mr. Chairman, whether or
9 not the Ministry operates on wetlands, however that
10 term might get defined through the evidence, will be
11 the subject matter of Panel No. 10.

12 Panel No. 10 will deal with where
13 harvesting occurs, what potential effects of harvesting
14 are on the environment, and how they are mitigated,
15 prevented, et cetera.

16 Mr. Williams has been using terms;
17 wetlands, swamplands, a whole series of things. I
18 think Panel 10 is the area where his concerns are
19 properly addressed.

20 MR. WILLIAMS: Well, Mr. Chairman, given
21 that these issues -- I have been assured that these
22 issues will be addressed, the wetland issues in Panel
23 10, we will reserve further questions to the
24 appropriate witnesses at that time and advise that this
25 concludes our cross-examination at this time.

1 THE CHAIRMAN: Thank you, Mr. Williams.
2 Mr. Campbell, can you advise us of a ballpark estimate
3 of the time you will take in cross-examination?

4 MR. CAMPBELL: I expect I will be a long
5 afternoon. If we start -- what time does the Board
6 intend to start at this time?

7 THE CHAIRMAN: Well, this is one of the
8 reasons why we are asking you. We are suggesting maybe
9 if you are going to be a while that we recommence at
10 two -- sorry, at --

11 MR. CAMPBELL: If we recommenced at
12 1:30...

13 THE CHAIRMAN: 1:45.

14 MR. CAMPBELL: 1:45, it's irrelevant, and
15 if you will want to make it shorter that's fine. If we
16 recommenced at 1:30, I would hope to be complete by
17 5:30. But I warn you that that will depend as always a
18 lot more on the answers than on the questions.

19 Mr. Chairman, just before we break, just
20 for purposes of having material available this
21 afternoon, I believe I have supplied to Mr. Mander -
22 and I will supply -- and I would like to just advise
23 what the Exhibits I will be referring to.

24 It is Exhibit 5A, 304, 303, 367, a new
25 exhibit which is Exhibit 374, which has been given a

1 number by Mr. Mander and a new Exhibit 375 which has
2 also been given a number by Mr. Mander and I have
3 copies available for everyone who wants to get them
4 before the break, including the witness panel if they
5 would like to obtain those before the break.

6 THE CHAIRMAN: Okay. I think in view of
7 your estimated allocation of time this afternoon, we
8 will recommence at 1:30.

9 MS. SWENARCHUK: Mr. Chairman, we are
10 sitting tomorrow, are we not?

11 THE CHAIRMAN: Tomorrow is Wednesday,
12 yes.

13 MS. SWENARCHUK: I believe there is a
14 meeting of counsel scheduled after the session today.

15 THE CHAIRMAN: Yes.

16 MS. SWENARCHUK: Is there any problem
17 with breaking Mr. Campbell's cross-examination by four
18 o'clock to have the meeting and finish his
19 cross-examination tomorrow morning.

20 THE CHAIRMAN: Is that a problem with
21 you, Mr. Campbell?

22 MR. CAMPBELL: It is not a problem with
23 me, Mr. Chairman.

24 THE CHAIRMAN: All right. We could do
25 that. You are going to be starting a little bit later,

1 in any event, are you not, Mr. Freidin, tomorrow?

2 MR. FREIDIN: Yes. It sounds like it is
3 confirmed now, whether I want to or not.

4 THE CHAIRMAN: All right. We can
5 certainly do that, aim towards breaking at four
6 o'clock.

7 All right. We will recommence at 1:30.
8 Thank you.

9 ---Luncheon recess at 12:35 p.m.

10 ---Upon commencing at 1:30 p.m.

11 THE CHAIRMAN: Thank you. Be seated,
12 please.

13 Ladies and gentlemen, we are now going to
14 have a short orientation session with Mr. McCreadie
15 before dealing with Mr. Campbell's cross-examination in
16 order that his cross-examination will not be broken up
17 by more than the adjournment at the end of the day.

18 Ms. Blastorah?

19 MS. BLASTORAH: Mr. Chairman, I did speak
20 to Mr. Mander and asked him to advise the Board that
21 they might like to have their copy of the site visit
22 itinerary which was given out some time ago. It is not
23 necessary to have it, if any of the parties don't have
24 it with them, but it is a handy reference.

25 And I would just reiterate I think what

1 you have already said yourself, Mr. Chairman, that it
2 is my understanding the same ground rules are to apply
3 on this site visit as you outlined on July 13th with
4 regard to the first site visit.

5 And one last point, a reminder to the
6 Board that we did provide you with copies of a small
7 book called the Forestries of Ontario for the first
8 site visit and since you are particularly going to be
9 seeing a different type of forest this time, the Great
10 Lakes/St. Lawrence you might like to bring that along
11 when you go on the site visit. If there is any problem
12 with not being able to find copies, I think we can
13 probably scrounge you up a couple more.

14 THE CHAIRMAN: Okay.

15 MS. BLASTORAH: Now, Mr. Mander could
16 just let us know if that's the case.

17 And the last item I mentioned to Mr.
18 Mander was the curriculum vitae of Mr. McCreadie who is
19 going to be your guide for this site visit. I believe
20 the Board was provided with copies. If you don't have
21 them with you, I do have a few extras.

22 Perhaps just to expedite matters I will
23 just provide you with a couple. I am just going to
24 refer very briefly to Mr. McCreadie's qualifications
25 since you haven't met him before.

1 MS. BLASTORAH: Mr. McCreadie is the
2 gentleman sitting up here second from the end at the
3 witness table next to Mr. Pyzer.

4 Q. I understand you are James David
5 McCreadie?

6 MR. MCCREADIE: A. That is correct.

7 Q. And that you have a degree in Forestry
8 from the University of Toronto?

9 A. That's also correct.

10 Q. And you would have taken all the
11 normal courses that are involved in receiving that
12 degree; is that correct?

13 A. Yes, I did.

14 Q. Okay. And in terms of your
15 experience, I believe you have worked for about 10
16 years in the Carleton Place District; is that correct?

17 A. That is correct.

18 Q. Has that experience been in the same
19 position throughout?

20 A. That position has been the same
21 throughout, except when I first went to that area it
22 was Lanark County, it was Lanark District. They
23 amalgamated the Ottawa District and the Lanark District
24 and formed the Carleton Place District. I retained the
25 same position.

1 Q. And that's for a 10-year period?

2 A. And that was for a 10-year period.

3 Q. Could you give the Board a very brief
4 description of your duties in the Carleton Place and
5 formally Lanark districts?

6 A. My responsibilities in the Carleton
7 Place District is to plan, organize, coordinate and
8 implement the forest management program within the
9 district, inter-relate with other services to make sure
10 we have IRM program in place.

11 I supervise 15 staff, I am responsible
12 for human resources administration, I look after the
13 budgeting, and I deal with local interest groups on a
14 regular basis, municipalities, federal government.

15 Four years ago I was given the
16 responsibility of fire management within the district
17 and I also plan, organize and coordinate and implement
18 the fire management program within the district.

19 Q. And that would have been in addition
20 to your existing duties as forest management
21 supervisor?

22 A. That's correct.

23 Q. So you are now forest and fire
24 management supervisor?

25 A. Correct.

1 Q. And previously I believe you worked
2 for seven years in the Sudbury District as unit
3 forester; is that correct?

4 A. That is correct as well.

5 Q. And your duties in that position are
6 accurately outlined in your curriculum vitae?

7 A. That's correct.

8 Q. Have you ever conducted or been
9 involved in site visits or tours of any kind in your
10 professional capacity, Mr. McCreadie?

11 A. On an annual basis we regularly
12 take -- give tours to the local municipalities, local
13 interest groups, the Ontario Maple Syrup Producers
14 Association. Due to our location in Carleton Place
15 District and having Ottawa within the district, on many
16 occasions we were requested by embassies if we can give
17 local tours to groups or individuals and we have done
18 so; namely, groups from China, Mexico and France.

19 Q. Thank you.

20 MS. BLASTORAH: Are you able to hear Mr.
21 McCreadie all right?

22 THE REPORTER: Yes.

23 MS. BLASTORAH: Q. With regard to this
24 site visit in particular, are you personally familiar
25 with all the areas that will be visited on the site

1 visit that you are going to be conducting for the
2 Board?

3 MR. MCCREADIE: A. I am. I have
4 personally been to all the sites except the mill and I
5 have talked to Mr. McRae who is going to be with us
6 with the mill and help us out with the mill tour.

7 Last week on the 7th and 8th, I
8 personally flew the routes we are going to be taking on
9 the fly-by.

10 Q. And have you spoken to anyone else to
11 further inform yourself about the particular sites?

12 A. I have spoken to all the unit
13 managers and forestry specialists both in the Algonquin
14 region and in the eastern region and they have supplied
15 me with information sheets on every stop that we are
16 going to, plus maps.

17 Q. And I understand that you have had
18 some discussion with the parties or their
19 representatives with regard to the sites that they had
20 informed the Board they wished to visit?

21 A. That is correct. I have tried to
22 personally contact each individual that's going to go
23 on the site tour and find out when they are going to be
24 arriving. I have also had discussions with Mr. Mosquin
25 on his sites that has been picked for Forests For

1 Tomorrow, and I have talked with Mr. Campbell and I
2 have also talked with Mr. Jack Oudette with his
3 submissions.

4 Q. Thank you.

5 MS. BLASTORAH: Perhaps if we could just
6 turn to the itinerary briefly, it is the one dated
7 November, 1988. I would just refer the Board to pages
8 1 and 2 of the itinerary which sets out weather
9 conditions to be expected and the sort of clothing that
10 might be predictable -- that might be appropriate and
11 so on.

12 And on page 2, particularly, we have a
13 list of what to bring. I am advised that the weather
14 is quite likely going to be wet, so you might take that
15 into account.

16 Next, on page 5 of the itinerary, we have
17 set out the commercial flights which will take various
18 members of the Board and the parties and their
19 representatives to Carleton Place, Ottawa, to commence
20 the site visit. The flight numbers and departure times
21 and so on are listed there for your reference, and I am
22 advised that Mr. McCreadie and two other
23 representatives from the Ministry will meet people at
24 the airport and will be wearing Ministry hats so that
25 they can be easily identified.

1 And I believe this has also been
2 discussed with the parties and other representatives,
3 some alternative arrangements have been made in some
4 cases.

5 THE CHAIRMAN: Can you give us an
6 indication, Ms. Blastorah, of the size of the group
7 that is going to be accompanying us?

8 MS. BLASTORAH: Q. I believe it is 16,
9 is it, Mr. McCreadie?

10 MR. MCCREADIE: A. 14.

11 Q. 14 counting the Board.

12 A. Yes.

13 MS. BLASTORAH: And Mr. McCreadie as
14 well, of course.

15 Q. If you will just look to the left of
16 the board here, we have a large map. Mr. McCreadie,
17 perhaps you could just give the Board an indication of
18 the scale of that map and what is shown on it?

19 MR. MCCREADIE: A. The scale of map is
20 1:250,000. What you are basically looking at is four
21 maps put together. It covers two regions and six
22 districts within our Ministry of Natural Resources.

23 Ottawa is over here, about 40 kilometres,
24 we have Lake Simcoe which is down in the left corner
25 and Huntsville and Georgian Bay. So that gives you

1 roughly what the scale of the map is.

2 Q. I see we have a legend in the lower
3 right-hand corner. Could you just --

4 A. The legend in the lower right-hand
5 corner. The green line is the line that we are going
6 to be taking by road and are going to be the stops that
7 we are going to be seeing off the road.

8 We are going to be travelling in five
9 four-wheel drive crew cabs, so if we get nasty weather
10 at least we still will be able to keep moving, if not
11 seeing at the stops, at least most of them anyways.

12 The gray line is going to be the fly-by
13 which is on the Tuesday morning. It is going to cover
14 a number of stops that have been submitted by Forests
15 For Tomorrow, Ontario Federation of Anglers & Hunters
16 and MOE.

17 We will be taking off from Calabogie, for
18 an hour and a half we will be flying over the Pembroke
19 District, Algonquin District, through Algonquin Park,
20 over to Burnt Island Lake in Algonquin Park which was a
21 submission by MOE and stopping at Smoke Lake to refuel.

22 That flight will take an hour and a half.
23 After refueling, we will be flying down through the
24 Algonquin District, down to Bancroft, out through the
25 Tweed District, going to see numerous sites submitted

1 by Forests For Tomorrow; namely, the Lavant Long Lake,
2 Norcan Lake, Evergreen Mountain, Black Mountain.

3 We are going to be seeing old pine
4 submitted by Ontario Federation of Anglers & Hunters
5 and approximately 12:30 we will be landing at Calabogie
6 and having lunch.

7 Q. And that's on the second day; is it,
8 Mr. McCreadie?

9 A. That is on the second day, that's
10 correct.

11 Q. Okay. And the first day was
12 indicated by the green line, that's the road travel?

13 A. The road travel is going to cover the
14 whole gamit of the tour, that's the green line. The
15 various coloured dots: Yellow dot is first day sites,
16 green -- blue dot is the second day, the red dot is the
17 third day and the green dot is the fourth day.

18 Q. So perhaps before we go on you could
19 quickly indicate to the Board what they will be seeing
20 on the first day. I understand we will be starting
21 from Carleton Place and ending up in Calabogie?

22 A. We are going to start from Carleton
23 Place and have lunch on route. There are seven stops
24 in Area 1 that we are going to stop at. We are going
25 to be looking at uniform shelterwood and tolerant

1 hardwoods, uniform shelterwood cutting and white pine.

2 We are going to be looking at various
3 areas of concern. There is going to be two marking
4 demonstrations, one marking demonstration uniform
5 shelterwood and white pine; another marking
6 demonstration intolerant hardwood marking.

7 Q. That's tree marking, I understand?

8 A. That is tree marking. Then it will
9 be on to Site 2. Site 2 was basically two stops; one
10 of the stops is an area where we have been - Ministry
11 of Natural Resources have submitted this stop - it is
12 an area where we have been having local discussions
13 with local people. It was an area that was harvested
14 very close to the road and we have had discussions with
15 the local municipality over it.

16 Another stop is hardwood woodlot that has
17 been managed for maple sugar production.

18 Q. And that --

19 A. Which is very --

20 Q. Sorry, go ahead.

21 A. And that is very big in Lanark
22 County, that it is the provincial capital for maple
23 syrup production in the forest.

24 Q. And that would end the first day?

25 A. That ends the first day. Then it

1 will be to Calabogie for the night stop.

2 MS. BLASTORAH: And I do have a list, Mr.
3 Chairman, for both the Board and the parties indicating
4 the designated accomodation and so on and I am advised
5 that there will be television available to keep track
6 of election results.

7 I will make that available perhaps
8 afterwards, just not to hold things up now.

9 Q. Okay, Mr. McCreadie, you have given
10 us a quick idea of what's going to be covered on fly-by
11 on day two and I believe we are going to be ending in
12 Bancroft on the evening of day two; is that correct?

13 MR. MCCREADIE: A. That is correct. In
14 the afternoon of day two there is going to be three
15 stops in the Pembroke District, one stop to take a look
16 at an area that was harvested around cross-country ski
17 trails; another site is to look at mixed wood stand
18 that is being clear cut to be converted to pine;
19 another stand is white pine management.

20 Then it is on to Bancroft. In Bancroft
21 we are going to spend two nights.

22 Q. Okay. And I believe there is a
23 slight change in the itinerary on day three. Perhaps
24 you could just indicate that as you go through the
25 items for day three?

1 A. Day three on Site 4, there is
2 basically two sites we want to go to. We originally
3 said that we wanted to see a harvest -- a 1988 harvest.
4 Unfortunately that harvest has been completed and, as a
5 result, it would take an additional 40 minutes to get
6 in and get out to see that site.

7 On the way in there is a 1985 harvest
8 that looks exactly the same as the 1988 harvest, and we
9 intend to stop at that site and there is also at that
10 particular site a hawk's nest. So we can get into a
11 discussion over a hawk's nest.

12 We are also on stop 4 going to take a
13 look at red pine plantation management in southern
14 Ontario and it will be the only stop that we have that
15 actually shows the open field planting of red pine
16 management on Crown land in southern Ontario.

17 Stop 5 is going to be the McRae Mill in
18 Whitney. Mr. John McRae, the president, is willing to
19 assist us with the tour through the mill. It is going
20 to be an hour tour. He is going to discuss the
21 utilization. It is a modern mill that utilizes all the
22 products that are given to the particular industry at
23 the time and his particular mill is a saw log mill also
24 utilizing low quality products that are made available
25 to him.

1 Lunch is going to be in Whitney at the
2 east block gate of Algonquin Park. After lunch, we are
3 going to get on the helicopters again and we are going
4 to go to four sites within the park.

5 One of the sites is white pine management
6 within the park. We are actually going to be landing
7 the two helicopters and looking at these sites. There
8 is going to be uniform shelterwood in the park, there
9 is also 2,000 hectares of juvenile spacing that was
10 done by the Algonquin Forestry Authority. We are going
11 to be stopping and have a look at that.

12 And also we are going to take a look at
13 actual road construction and are going to cross
14 portages within the park and how they mitigate their
15 roadwork.

16 Another change is going to take place at
17 that time. We said we would be driving back to
18 Bancroft. We are actually going to fly back to
19 Bancroft and land at the motel and the helicopters and
20 the pilots are going to be staying there with us for
21 the night.

22 Q. And I understand that provision has
23 been made for those representatives of parties who
24 won't be able to fit in the helicopters. I am advised
25 that we have more people than we can accommodate for

1 the air portion, so ground transportation will be made
2 available for those people and they will see, I believe
3 it is on day three, that they will see three of the
4 four ground locations?

5 A. We are going to try to see three of
6 the four ground locations in day three, likewise when
7 we do the fly-by. The forestry specialist from the
8 eastern region, Eric Boisson, is going to take the
9 people that are left on the ground the morning of the
10 fly-by and show them some sites.

11 Al Corlett, the forestry specialist from
12 the Algonquin region is going to take the remaining
13 people on day three and try to show them the three
14 sites.

15 Q. And day four, I believe, if you will
16 look at page 10, I think it is -- rather page 24.

17 A. Page 24.

18 MS. BLASTORAH: Page 24 of your
19 itinerary, that lists Option B. As you will recall,
20 Mr. Chairman, that was the one selected by the Board.

21 Q. and that will be done on day four,
22 Mr. McCreadie?

23 MR. MCCREADIE: A. That is going to be
24 done on day four and we are going to leave Bancroft and
25 we are going to hit the sites that are clear cut

1 operation in hard maple - a site that we haven't seen
2 in the tour previously - also clear cut operations in
3 poplar, very similar to what we see in northern
4 Ontario. These are two management tools that are used
5 by the Minden District.

6 We are also going to see -- be getting
7 into cottage country and see how white pine management
8 is conducted within cottage country, Haliburton,
9 namely, and Minden. We are also going to see white
10 pine management where it was a clear cut site prepared
11 and planted to white pine.

12 After those stops it is on to the Muskoka
13 airport where we will be boarding a twin Otter which
14 will be coming back to Toronto. Also, we have -- one
15 of the helicopters will be there to take people back to
16 Sudbury if they wish to go to Sudbury.

17 THE CHAIRMAN: Where will the twin Otter
18 land in Toronto?

19 MR. MCCREADIE: Toronto International
20 Airport.

21 MS. BLASTORAH: Q. And just one last
22 item, Mr. McCreadie. On page 24, I believe there was a
23 slight change to the items listed there, Nos. 4, 5 and
24 6; is that correct?

25 MR. MCCREADIE: A. Originally we said we

1 could see Sites 1, 2, 3, 4 and 5 and would have to
2 eliminate No. 6. In closer inspection when we did the
3 site tour, it was stop No. 6 that we can see as far as
4 clear cutting is concerned and it is going to have to
5 be stop No. 4 that we are going to have to miss because
6 of the time constraints.

7 MS. BLASTORAH: And I believe that pretty
8 well covers it, Mr. Chairman.

9 I will provide the Board with these
10 accommodation lists and I also have road maps, Ontario
11 road maps available for anyone who wishes one in case
12 they wish to mark the particular sites that they
13 visited or just to orient themselves.

14 I will make some of them available at the
15 back of the room for any representatives of the parties
16 or the parties who wish to pick them up.

17 Thank you.

18 THE CHAIRMAN: Very well. Thank you very
19 much.

20 MS. BLASTORAH: Thank you, Mr. McCreadie.

21 MR. MCCREADIE: Thank you.

22 THE CHAIRMAN: Is the resort and the
23 lodge two different places?

24 MS. BLASTORAH: I believe they are, Mr.
25 Chairman. Perhaps Mr. McCreadie...

1 MR. McCREADIE: Yes, they are. You are
2 going to be staying in the resort and we will be
3 staying over in the lodge.

4 THE CHAIRMAN: We get to have fun, nobody
5 else does; is that the idea?

6 MS. BLASTORAH: That's so you can watch
7 the election in private.

8 THE CHAIRMAN: Thank you.
9 Are you ready, Mr. Campbell?

10 MR. CAMPBELL: Mr. Chairman, I have
11 provided the Board with copies of two exhibits, only
12 one of which I will be referring to, and that is the
13 document that is marked as Exhibit 374, and I should
14 identify it now as an MNR policy relating to the
15 application of the Manual of Instructions for Aquatic
16 Habitat Inventory Surveys. The manual itself you will
17 recall is Exhibit 302.

18 Exhibit 375 is a package consisting of
19 four Ministry of the Environment interrogatories and
20 their answers. The interrogatory numbers are MOE
21 Interrogatories for Panel 8, No. 5, 9, 10 and 16 and
22 that package Mr. Mander has assigned Exhibit 375 to.

23 THE CHAIRMAN: Very well. That will be
24 so marked.

25 ---EXHIBIT NO. 375: Ministry of the Environment

1 Interrogatories No. 5, 9, 10
2 and 16 for Panel 7, and their
3 answers.

4 MR. CAMPBELL: I am sorry, Panel 7. I
5 should have said Panel 7, not Panel 8. I am ahead of
6 myself. I don't think it is necessary for the Board to
7 have those -- that Exhibit 375 in front of it.

8 Mr. Chairman, in addition to a few minor,
9 what I call, housekeeping type matters, there are six
10 issues which my cross-examination will address.

11 Now, I am going to give that list now
12 but, in giving that list, I would like to make it clear
13 that it is not intended that the evidence of this panel
14 is the only evidence which we say is relevant to these
15 issues, that it is clear in our view that the evidence
16 of this panel is part of the evidence that is relevant
17 to these six issues.

18 I should also caution the Board and other
19 parties that in attempting to define at this point the
20 issues which we intend to address in our
21 cross-examination, neither the Board nor any of the
22 other parties should take those issues as stated as
23 indicating any Ministry of Environment position on
24 those issues.

25 THE CHAIRMAN: Why is the Ministry of the
Environment not prepared to take a position?

1 MR. CAMPBELL: I didn't say we weren't
2 prepared to. I said that in stating the issues they
3 should not be read as stating a position.

4 I am attempting to identify issues which
5 are of concern to the Minister of the Environment and
6 the position to be taken on these issues will await all
7 of the proponent's evidence in particular and perhaps
8 will also await evidence to be given by other parties.

9 I should make one exception to that, which
10 is the first issue which I will give you.

11 THE CHAIRMAN: Just before you go on,
12 just to clarify something you have probably dealt with
13 this earlier, Mr. Campbell. In this proceeding, you
14 are representing the Ministry or the Minister or both?

15 MR. CAMPBELL: I think the usual
16 vernacular, Mr. Chairman, in this is that the Minister
17 of the Environment is stated in the Act as having the
18 right to appear in these proceedings and counsel,
19 therefore, in my position is normally referred to as
20 appearing for the Minister of the Environment.

21 Obviously, that encompasses the areas of
22 responsibility of the Ministry generally and I do, as I
23 have explained previously, have some other
24 responsibilities with relation to other government
25 ministries who want to participate in the proceedings

1 making use of my services as counsel.

2 THE CHAIRMAN: Thank you.

3 MR. CAMPBELL: Now, I would like to state
4 the six issues. The first one is the Fish Habitat
5 Guidelines and their adequacy for the purposes
6 intended. Obviously, having been heavily involved in
7 their development on that issue, we take the position
8 that they are adequate for the purposes intended.

9 The second issue is as follows: What are
10 the basic requirements with respect to the
11 implementation of the various guidelines which are
12 relied on in timber management planning.

13 The third issue relates to the ability of
14 parties to the proceedings to test the evidence of this
15 panel.

16 The fourth issue relates to data
17 requirements and is the issue of whether it is
18 reasonable to require a level of mandatory minimum data
19 requirements.

20 The fifth issue has to do with what I
21 will call prescriptions. Is it reasonable to have a
22 level of minimum mandatory prescriptions.

23 And the sixth issue, I will sort of try
24 to state it two ways, I guess. It is really one of:
25 What are the components required for making decisions

1 in timber management planning and how is it best to
2 document those components in the public process and we
3 see as encompassed in that a statement of issue, the
4 question of what is the relevant information and
5 analysis this is required to support a proposed
6 decision or a proposed timber management plan.

7 Now, Mr. Chairman, none of those are
8 particularly elegantly stated. I thought as we were
9 moving towards this exercise that I would try and lay
10 them out and I invite the Board, during the course of
11 my cross-examination, if it feels I am straying in
12 ways -- straying from those issues, to invite me to
13 explain why my submission is that I am not.

14 And perhaps I would just suggest this as
15 perhaps a little practical exercise before we get right
16 into making some decisions on this matter.

17 Now, the first area all -- I should also
18 say that I don't think any of those issues as stated
19 are any particular surprise. I had to revise my
20 cross-examination several times because I think they
21 have been touched upon by virtually all intervening
22 counsel.

23 CROSS-EXAMINATION BY MR. CAMPBELL:

24 Q. Now, Mr. Ward -- just a minute, I
25 will just ask the panel generally.

1 Mr. Pyzer, I am going to sort of -- or
2 Mr. Clark, I am not sure who I was instructed to treat
3 as team leader, but I think it was perhaps Mr. Clark.
4 I make a practice of asking that at the beginning of
5 each panel, whether there are any corrections,
6 additions or changes which you or any other member of
7 this panel would wish to make to the answers provided
8 to the Minister of the Environment in respect of the
9 interrogatories submitted by it in relation to this
10 panel.

11 So you are content to have -- I gather
12 the panel is content to have the answers provided
13 adopted as their evidence in these proceedings?

14 MR. CLARK: A. Yes.

15 Q. Now, Mr. Ward, I would like to turn
16 first to the Fish Habitat Guidelines, and do you agree
17 with me that the habitat guidelines first were
18 developed with a good deal of consultation between your
19 Ministry and the Ministry of the Environment?

20 MR. WARD: A. Yes.

21 Q. And do you agree that they are
22 intended to address both fish habitat and water quality
23 concerns?

24 A. That's correct.

25 Q. And do you agree that in that sense

1 the guidelines respond to a shared mandate which
2 relates to both fish habitat quality and water quality
3 and that shared mandate is, of course, between the two
4 Ministries?

5 A. That's correct.

6 Q. All right. Now, I would like you to
7 turn to Exhibit 5A, if you would, please, starting at
8 page 7.

9 A. My copy of Exhibit 5A doesn't have
10 page numbers. Is that the beginning, the attachment
11 No. 3?

12 Q. No, your copy does not have
13 handwritten numbers in the lower right-hand corner?

14 A. I have pages 16 to...

15 Q. No, if you would start with page 7.

16 A. All right, I have it.

17 Q. All right. Now, I just ask you to
18 confirm that Exhibit 5A records certain commitments
19 made between the two ministries which govern this
20 matter of fish habitat and water quality guidelines?

21 A. Yes, it does.

22 Q. I would like to direct your attention
23 then first to the last paragraph on page 7 where it
24 states that:

25 "MNR will make amendments to the Timber

1 Management Guidelines for the Protection
2 of Fisheries Habitat which will afford
3 greater protection for water quality
4 specifically."

5 And the amendments are noted in the
6 attached material and that is Attachment 3 beginning at
7 page 16.

8 I would just ask you to confirm that
9 those amendments, which we will run through in some
10 detail, have in fact been made?

11 A. They have.

12 Q. And turning over to page 8, if you go
13 to the second full paragraph on that page, it indicates
14 that:

15 "MNR is committed to drafting a policy
16 for the implementation of the fisheries
17 guidelines. The policy will clearly show
18 the requirements for collection of
19 minimum information before operations
20 occur..."

21 And indicates that:

22 "In the absence of minimum information,
23 buffer areas will be designated around
24 water bodies according to shoreline slope
25 as prescribed in the fisheries

1 guidelines."

2 Again, I would ask you whether the policy
3 that has been filed in these proceedings I believe as
4 Exhibit thirty --

5 A. Four.

6 Q. --34 is the policy which has been
7 developed and a response to that agreement between the
8 two ministries?

9 A. It does.

10 Q. And that policy, requires, as stated
11 there on page 8:

12 "In the absence of minimum information,
13 that buffer areas will be designated
14 around water bodies according to the
15 shoreline slope prescribed in the fishery
16 guidelines."

17 A. We use a term reserves, but...

18 Q. All right. But in any event, I want
19 to be clear that it is your evidence that the policy
20 and the guidelines which are referenced by the policy
21 do in fact require that reserves, buffer areas,
22 whatever the term, correct terminology, will be
23 designated around water bodies?

24 A. That's correct.

25 Q. Now, I want then to take you to page

1 16 of that document which is appendix -- the beginning
2 of Appendix or Attachment 3.

3 Now, with respect to the various items
4 that are listed there under the heading: Timber
5 harvesting close to lakes and streams, the first
6 requires that MNR develop a policy as to the manner in
7 which the guidelines will apply and that is, again,
8 Exhibit 304; is it not?

9 A. Correct.

10 Q. And with respect to sub-paragraph 2,
11 again, it requires that the Fish Habitat Guidelines be
12 applied to all water bodies in excess of 10 hectares or
13 smaller if there is a potential fisheries value with
14 permanent surface drainage to a lake or system and, et
15 cetera.

16 Again, I just ask you to confirm that
17 that requirement has been met by the Fish Habitat
18 Guidelines?

19 A. It has.

20 Q. All right. Now, before we proceed
21 past that one, the term there is used potential
22 fisheries value. I believe a similar terminology is
23 used in the policy of significant fisheries value.

24 Could you explain, please, what you mean
25 by the terminology or what MNR more appropriately means

1 by the terminology significant fisheries value?

2 A. In terms of significant fisheries
3 value, I guess whether that fisheries provides some
4 value or use to Ontario.

5 Q. Is it necessarily limited to sport
6 fish?

7 A. No.

8 Q. But it would include sport fish such
9 as trout, walleye, bass, pike?

10 A. That's correct.

11 Q. But it is, as I understand your
12 answer, intended to be more general than that and it is
13 a fisheries value which is of benefit to Ontario, to
14 use your terminology?

15 A. That's correct.

16 Q. And so there is no species limitation
17 on that?

18 A. No.

19 Q. Would you agree, however, that the
20 four species that I have named; trout, walleye, bass
21 pike, would all fall within that definition?

22 A. That's correct.

23 Q. Now, again, continuing down the list,
24 Item No. 3 -- I think I will read it. Can you confirm
25 that it is included in the guidelines and policy?

1 A. It is.

2 Q. And No. 4 makes a reference to warm
3 water lakes. Can I take it that that is the same
4 classification of lakes that is referred to in the
5 guidelines as other lakes?

6 A. That's correct.

7 Q. And that, of course, is covered by
8 the guidelines?

9 A. That's correct.

10 Q. And the obligations set out in Item 5
11 on page 16, the bottom paragraph, I take it you would
12 agree that that has been incorporated in the policy and
13 the guidelines?

14 A. It has.

15 Q. And with respect to Item 6 at the top
16 of page 17, I gather it is under development but will
17 be brought forward in these proceedings at an
18 appropriate time when its development is complete?

19 A. I understand that to be so.

20 Q. With respect to Item 7 calling for
21 certain changes, I gather they have been made?

22 A. Yes.

23 Q. With respect to Item 8, that item has
24 also been carried out according to the agreement and
25 reflected in the policy and guidelines?

1 A. It has.

2 Q. And am I correct in my understanding
3 of Item 8 that the width of the area of concern
4 referred to in paragraph 8 is the 90-metre width, or if
5 slope information is available the 30 to 90-metre
6 slope-dependent buffer?

7 A. Well, that is in No. 8 you are
8 saying?

9 Q. Yes.

10 A. Well, in terms of the --

11 Q. In terms of the width of the area of
12 concern -- just a minute, have I got my numbers mixed
13 up. I am sorry, I think I have my numbers mixed up,
14 just a moment. I attached this note to a wrong
15 paragraph.

16 In any event, let me put the question
17 more generally. Whenever we are talking about the
18 application of the guidelines and policies, it is my
19 understanding that when the term an area of concern is
20 used to identify an area of concern around one of these
21 water bodies, streams, wetland areas, whatever it is,
22 the width of that area of concern is intended to be 90
23 metres if no slope information is available, or 30 to
24 90 metres if slope information is available?

25 A. That's correct.

1 Q. And with respect to No. 9, I would
2 just ask you to confirm that that agreement is
3 reflected in the policy and guidelines?

4 A. It is.

5 Q. Now, there is a note on page 17
6 following the tenth item which contemplates that if
7 scientific information changes these measures and
8 actions will be adjusted to reflect that additional
9 knowledge.

10 Do you see that note, page 17, just under
11 item 9.

12 A. Yes, I do.

13 Q. And I would ask you to confirm that
14 as that additional information is developed that that
15 could result in mandatory prescriptions which are
16 either higher or lower than what is called for in the
17 guidelines depending on the outcome of that research?

18 A. That's right. And I believe that is
19 referencing what we have termed the ESSA monitoring
20 studies.

21 Q. I am sure we will be coming to that
22 later in the hearing.

23 Now, again, I would just ask you to
24 confirm that Exhibit 304, which is the policy, is
25 intended to conform with this understanding recorded in

1 Exhibit 5A; is that correct?

2 A. That's right.

3 Q. And Exhibit 304, if you would turn to
4 it, requires certain minimum information to be
5 collected and that can be found on page 2. Do you have
6 that before you?

7 A. I do.

8 Q. And therein under the heading:
9 Minimum Information Requirements, paragraph 1 sets out
10 the resource inventory information requirements for
11 this policy. And I take it you would agree that that
12 is consistent with the agreement reached between the
13 ministries?

14 A. I do.

15 Q. Now, in response to a question from
16 Mr. Freidin, you indicated that any alternative method
17 of collecting that information must result in
18 information of equivalent quality being collected even
19 though paragraph 2, under minimum information
20 requirements, contemplates that there is some
21 flexibility in that respect. Do you recall giving that
22 answer?

23 A. I do.

24 Q. And have I paraphrased it accurately?

25 A. Yes.

1 Q. And I take it you are familiar with
2 the policy of the use -- with respect to the use of the
3 AHIS manual which policy I understand now to be filed
4 as Exhibit 374?

5 A. That's correct.

6 Q. Now, that policy -- perhaps it is
7 short, perhaps I will simply read it:

8 "The Manual of Instructions for Aquatic
9 Habitat Inventory Surveys is hereby
10 designated as the official procedural
11 manual to be used by all fish and
12 wildlife personnel when conducting
13 inventory surveys on lakes and streams.
14 It is essential that the methods and
15 instructions outlined in the manual be
16 followed as closely as possible so that
17 standardization of data collection and
18 documentation be maintained."

19 And I take it you are familiar in your
20 working day with that policy?

21 A. I am.

22 Q. Now, as I understand it, going back
23 to the guidelines, the use of the term normally in
24 paragraph 2 under minimum information requirements is
25 intended to capture the kind of situation where you

1 know from your many other sources of information, that,
2 for instance, there is lake trout in a lake, therefore,
3 the mandatory maximums apply and there would seem to
4 be, for the purposes of these guidelines in any event,
5 little or no benefit in going out to reconfirm what you
6 already know. Is that a fair summary?

7 A. For timber management planning
8 purposes, that's correct.

9 Q. All right. Now, what other
10 circumstances would you see as existing where the AHIS
11 manual would not normally -- or would not be used
12 period?

13 A. Well, in terms of obtaining the
14 information, the minimum information listed in the
15 policy, you wouldn't necessarily need to obtain all the
16 information that is outlined in the manual to come up
17 with the minimum information.

18 Q. Yes, but with respect to those items
19 that are set out in paragraph 1 of the minimum
20 information requirements, I understand the AHIS manual
21 goes beyond that. But with respect to those items in
22 particular, I would like to get from you some sense or
23 some judgment as to when the AHIS manual would not be
24 applied?

25 A. I think it would be applied in most

1 instances. I can't think of any examples where it may
2 not be applied right now.

3 Q. Other than the one we talked about?

4 A. Right.

5 Q. Would it be a fair summary of your
6 Ministry's position that if that information can be
7 gathered in a different way and at some point -- or if
8 in the course of gathering information to meet the
9 minimum information requirements it became clear that
10 the maximum prescriptions were going to apply in any
11 event, that there being little benefit to continuing to
12 gather more information for protection purposes, you
13 would not then do some?

14 Is that a fair summary? It is not well
15 stated, but...

16 A. Generally that would be so, if you
17 were just providing information for timber management
18 planning purposes.

19 Q. And, as I understand it, the
20 rationale for that position is that the guidelines are
21 intended for protection purposes and that the situation
22 might well be different if the information was being
23 gathered for monitoring purposes or trend line data
24 purposes, or some other purpose?

25 A. That's correct.

1 Q. And are you satisfied that the normal
2 application of the AHIS manual, with occasional
3 exceptions in the kind of circumstances I have
4 described, is, from your professional point of view, an
5 appropriate way to administer these guidelines?

6 A. It is.

7 Q. Now, if we could go then to paragraph
8 4 under minimum information requirements, it states
9 that:

10 "Acceptable methods for collecting
11 minimum information required by the
12 guidelines include..."

13 Now, Mr. Ward, I am a lawyer and the word
14 include in legal documents is often interpreted as not
15 being an exhaustive list of the acceptable methods.

16 I would ask you just to confirm that this
17 list is intended to be a complete list of the
18 acceptable methods for collecting the relevant kinds of
19 information?

20 A. You said a complete list?

21 Q. Yes.

22 A. Not necessarily.

23 Q. All right. What exceptions are
24 contemplated?

25 A. Well, just what I can think of right

1 now in terms of determining slope of a shoreline areas,
2 we have suggested two methods that we feel determines
3 slope accurately; that is, the clinometer and aerial
4 photographs using a stereoscope and paralex bar.

5 But there is also a technique of
6 digitized mapping, topographical mapping that is being
7 developed and, according to people working in that
8 area, they feel that slopes can be accurately
9 determined with this digitizing and computer analysis
10 of slopes.

11 So if that proves as a technique that we
12 could use for accurate slope measurements, we could use
13 that.

14 Q. Would it be an undue administrative
15 burden to require that if other methods were going to
16 be used in this area that they be discussed with the
17 Ministry which I represent?

18 A. I don't think that would be an undue
19 burden.

20 Q. Okay. And could I take it that,
21 generally speaking, the Ministry of Natural Resources'
22 approach to this area would be that, again, whatever
23 method is eventually developed or might supplement this
24 list of methods, should result in information which is
25 at least of the quality that would be obtained by using

1 these methods?

2 A. That's right.

3 Q. All right. Now, I want to take you
4 to the guideline document itself, Exhibit 303.

5 Just before we turn up the pages I just
6 want to place it in some context and I would ask you to
7 confirm that the guidelines document itself, which is
8 Exhibit 303, in the hierarchy of documents that we have
9 been discussing, is the third document in that
10 hierarchy in that Exhibit 5A set out an agreement,
11 Exhibit 304 sets out a policy, and Exhibit 303
12 sets out guidelines; and both the policy and the
13 guidelines have to conform with the agreement that is
14 set out in Exhibit 5A?

15 A. That's correct.

16 Q. All right. Now, if we can go to
17 Exhibit 303, the green pages, page 1, I would like to
18 go to the second -- I guess it is the first full
19 paragraph underneath the table on the left column
20 showing the slopes. It is the paragraph that reads:

21 "The above widths of area of concern are
22 for general use. Where better
23 information is available on a local
24 basis, the widths may be modified in a
25 manner consistent with the protection of

1 fish habitat. "

2 And I would ask you to confirm that what
3 is contemplated here is the potential for wider areas
4 but it is not contemplated that the areas would be
5 taken to a narrower width than the mandatory minimums
6 set out elsewhere in the policy and guidelines?

7 A. That is not necessarily true. I gave
8 an example in terms -- this morning in
9 cross-examination with Mr. Williams.

10 Q. Well, could you -- it is not clear to
11 me. Perhaps you could just give it again then, please?

12 A. Well, the two examples are sort of
13 the two extremes. One I said there could be a wider
14 width if, for example, the area of concern, say it was
15 30 metres on a slope that went from 0 to 8 degrees may
16 be subject to blowdown; in other words, the orientation
17 of that reserve in terms of prevailing winds, the soil
18 depths, the roots may be fairly shallow and unstable,
19 you may want a wider width to withstand blowdown.

20 Q. Yes, and that is reflected elsewhere
21 in the guidelines?

22 A. That's correct. The other point is
23 that there are places where we have grasses, maybe
24 alder areas that may be, you know, flooded at one time;
25 in other words, they might be up to the high water

1 mark, but for most of the year when timber management
2 activities may occur in the summertime they are grassed
3 areas, dry areas that could also provide some buffering
4 ability in terms of preventing sediment from moving
5 into the aquatic environment or nutrients or preventing
6 organic debris, that you may not need as much standing
7 timber to provide the same benefits.

8 It is a judgment call by the
9 professionals in the district and, in some cases, you
10 may achieve the same objectives with a smaller width of
11 standing timber.

12 Q. Now, that is one particular example
13 where the water is at a particular time of year lower
14 in dry areas exist. Are you indicating that the buffer
15 would be less in width from the wet area even at that
16 time of year?

17 A. That's right, it would be less in
18 width, the high water mark.

19 Q. Less than the high water mark, but I
20 guess -- are you using the high water mark in the
21 annual sense?

22 A. Yes.

23 Q. But would it be less in width from
24 the lower water area when the water has
25 significantly --

1 A. No, no, it could be much wider than
2 what we have even indicated here.

3 Q. But it would not be narrower than
4 what is indicated in here from the edge of the water at
5 the time that the water has receded and all the land
6 around dried out?

7 A. That's right, that's correct.

8 Q. It would not be narrower?

9 A. Right.

10 Q. Now, apart from that example, are
11 there any others where you can point to a situation
12 where that buffer or reserve would be narrower?

13 A. No, that is the only area where I
14 have -- in terms of reviewing timber management plans,
15 that I have seen that kind of prescription proposed and
16 the rationale for it given as such.

17 MRS. KOVEN: Excuse me, Mr. Ward.
18 Wouldn't an example be in a case where you might have
19 something like spruce budworm and you would want to get
20 rid of a certain area of trees and you would either
21 burn or cut it to the shoreline? In that case there
22 wouldn't be a buffer at all, but...

23 MR. WARD: No, we have -- I have had that
24 argument thrown at me by foresters as well, that since
25 the trees are damaged they are going to burn or where

1 we have got a prescribed burning area we can't protect
2 the reserve that we have, let's cut to the shoreline.

3 My argument has always been that we have
4 a reserve there to protect a value and we want the
5 reserve or some kind of buffer in place to protect that
6 value and if you are doing prescribed burning or you
7 protect that reserve, they can do that.

8 I think that later panels will discuss
9 prescribed burning as a silvicultural tool and I think
10 in terms of damage from budworm or whatever, I always
11 feel that it will have less impact on the aquatic
12 environment if the reserve has been burned, either
13 deliberately or accidentally by man or by nature, or if
14 it is budworm damaged trees and they fall down and die,
15 I feel that would cause less of an impact than if we
16 actually go in there and log it, and where we have
17 skidders and compaction of soil and all the other
18 impacts that you get with logging.

19 So, you know, I don't see that being a
20 reason to go in and remove the standing trees because
21 they are budworm damaged or we have got to do a
22 prescribed burn there and we want to burn to the
23 water's edge. Does that answer your question?

24 MRS. KOVEN: Yes.

25 MR. CAMPBELL: Q. All right. So that

1 other than the example that you give where there is a
2 grassy area with -- in effect, the wet area retreats
3 significantly in dry weather, can I take it that there
4 are no other examples that you can point to me in your
5 experience where that mandatory -- where any discretion
6 would need to be exercised on that mandatory minimum
7 buffer?

8 MR. WARD: A. I can't think of any other
9 examples, no.

10 Q. And, in fact, is it not correct to
11 characterize the buffer as a mandatory minimum
12 slope-dependent buffer?

13 A. I would characterize it as that
14 understanding that we use the term reserve and --

15 Q. Well, I will take -- I am not too
16 worried about the buffer end of it if you and I can
17 agree that it is a mandatory minimum slope-dependent
18 reserve?

19 A. That's correct, yes.

20 MRS. KOVEN: You are not going to make an
21 acronym out of this, are you, Mr. Campbell?

22 MR. CAMPBELL: No way, I want it said
23 fully every time.

24 Q. Going down to paragraph -- Section 51
25 of the guidelines on the same page --

1 MR. WARD: A. I just want to clarify
2 that last point, Mr. Campbell. We are talking where we
3 have a buffer or reserve in place for protecting
4 critical fish habitats or...

5 Q. Yes, that's those areas that are
6 identified as areas of concern will have a mandatory
7 minimum slope-dependent reserve?

8 A. That's correct, right.

9 Q. All right. And we get into the other
10 50 per cent on the cool water lakes?

11 A. Right.

12 Q. And I assume that is what was causing
13 your reservation?

14 A. That's right.

15 Q. But those are not identified, as I
16 understand it, the areas where that 50 per cent where
17 cutting might be permitted provided there wasn't fish
18 habitat there--

19 A. That's right.

20 Q. --those areas are not identified as
21 areas of concern, as I understand it?

22 A. That's correct, right.

23 Q. All right. Now, if we go down to
24 Section 51, Mr. Ward, again, if we can look at, say,
25 51.1, where it says under lake trout lakes:

1 "Roads should not be constructed within
2 areas of concern."

3 I take it that the terminology "should
4 not" reflects a mandatory prescription in that case?
5 It is not sort of: Well, in most cases they shouldn't
6 be there, this is a mandatory prescription; is it not?

7 A. I think it is stated as you read it,
8 like all care must be made--

9 Q. Well, I want to be clear because --

10 A. --to not have roads within that area
11 of concern.

12 I know there are examples where we have a
13 lot of small lake trout lakes and the only place to put
14 a road is between two lakes; in other words, the road
15 infringes on the area of concern for both those lake
16 trout lakes and the road--

17 Q. Well, just a minute, Mr. Ward.

18 A. --would be located there.

19 Q. Just a minute. If we go over to 52
20 on the next column, there is a significant difference
21 with the way roads are treated there. It says:

22 "Roads should not be constructed within
23 areas of concern."

24 And it goes on to say:

25 "That exceptions may be considered where

1 it can be demonstrated that fish habitat
2 will be protected."

3 Isn't it fair to conclude, and I would
4 ask you to agree, that the difference between those two
5 wordings is that in the one -- is that "should not" is
6 used as a mandatory prescription, that an exception is
7 provided to that mandatory under the heading other
8 lakes and the reason that the exception wording is
9 there is because the phrase "roads should not" is in
10 fact a mandatory prescription?

11 Isn't that the way this was intended?

12 A. I think you can read that into the
13 guidelines, yes.

14 Q. Is that a correct interpretation of
15 the guidelines?

16 A. Certainly in terms of lake trout
17 lakes we apply more stringent protection.

18 Q. I understand that.

19 A. Okay.

20 Q. Is that a correct interpretation of
21 the guidelines?

22 A. As I said, there are going to be
23 instances where roads will be located within an area of
24 concern of a lake trout lake.

25 THE CHAIRMAN: Would there not normally,

1 Mr. Campbell, be a difference between the usage of the
2 words should and shall?

3 MR. CAMPBELL: Well, that's exactly what
4 I am trying to explore, Mr. Chairman, because if it was
5 should why was it necessary in the one case to make an
6 exception and not in the other case?

7 And, if I could have just a moment, I may
8 have to pursue this a little farther.

9 MR. WARD: Maybe I can add something
10 there, Mr. Campbell. In terms of locating roads, the
11 timber management planning process outlines a process
12 for determining road location and where roads are going
13 to be built and, as I indicated, there may not be any
14 other alternatives for building a road except between
15 two lake trout lakes.

16 They may try and look at other
17 alternatives that try and get around the lakes to
18 access that timber, but if the decision is made that
19 the only way you can get to that timber is between
20 those lakes -- between the two lake trout lakes, then
21 we would be looking at more stringent requirements in
22 road building in terms of that is part of the rationale
23 or part of the reason for building in an area of
24 concern.

25 And, for example, you can narrow the

1 right-of-way width from its standard 120 feet to 60
2 feet or something like that to minimize the impact and
3 maintain as much of the standing trees as a reserve as
4 possible. So that would kick in that aspect of the
5 timber management planning process.

6 Q. Let me understand what I think you
7 are saying. Are you prepared to agree that with
8 respect to lake trout lakes, where it says:

9 "Roads should not be constructed within
10 areas of concern",

11 that roads will not be constructed within areas of
12 concern except in cases where it is otherwise
13 impossible to reach significant stands of merchantable
14 timber? Is that the philosophy?

15 A. That's the gist of it, yes.

16 Q. And would it be an undue
17 administrative burden on MNR that when it was proposing
18 to adopt that practice; that is, put a road within an
19 area of concern, that it review the matter with a
20 designated individual at the Ministry of the
21 Environment?

22 MR. KENNEDY: A. Mr. Campbell, if I can
23 help out here.

24 Q. You can help out by saying yes--

25 A. I believe --

1 Q. --or no.

2 A. I believe that's currently in place
3 and the documentation of such an occurrence would occur
4 through the area of concern planning process, and at
5 this time I would like to refer to a separate
6 appendices in the Class EA Document, it is Appendix 2.

7 Q. I understand that it might occur,
8 that we might be able to discern this generally through
9 the ongoing timber management planning process, but
10 this is going to be a process that has a significant
11 paper flow associated with it and, Mr. Kennedy, what I
12 am asking for is something in addition.

13 I am asking whether it would impose an
14 undue administrative burden on the Ministry of Natural
15 Resources to be required, in cases where it was -- on
16 lake trout lakes where it was going to make any
17 exception to what I refer to as mandatory prescriptions
18 under 51, that it specifically review those with the
19 Ministry of the Environment prior to their being
20 proposed in a timber management plan so that the
21 Ministry of the Environment's water quality concerns
22 can be considered?

23 If you want to pass it back to Mr. Ward I
24 will be content with his answer.

25 MR. WARD: A. You want, like, if I can

1 indicate in terms of a timber management plan where we -
2 have a road going in an area of concern of a lake trout
3 lake that we send that information to the regional
4 office of MOE? Is that what you are asking for?

5 Q. I can sit down in some other forum
6 and decide how best it would be done.

7 I am not particularly concerned about how
8 best it would be done - and you will find this very
9 reasonable in that respect - but what I am asking --

10 A. We would like it at our open houses
11 and invite the Ministry of Environment representative
12 to attend our open houses.

13 Q. I think I have tried to indicate that
14 I am looking for something outside of, or in addition
15 to the general flow of material that would be coming to
16 Environment under the proposed planning process.

17 I am asking you whether this is clearly
18 going to be an exceptional case; is it not, Mr. Ward?

19 A. I believe so, yes. My experience is
20 that --

21 Q. We are not talking about very many
22 occasions?

23 A. No.

24 Q. We are talking about water quality
25 concerns?

1 A. Mm-hmm.

2 Q. Is that yes?

3 A. That's correct, yes.

4 Q. All right. Now, in these limited
5 number of cases which you believe may occur under these
6 circumstances, I am simply asking that it be reviewed
7 with Ministry of the Environment appropriate personnel,
8 and I am quite willing to sit down with your counsel
9 and people involved in this to see how best and most
10 easily that could be done, but that it be drawn -- that
11 specific instance be drawn to the Minister of the
12 Environment's attention specifically and dealt with
13 specifically in the way that you say you do on many
14 other issues?

15 A. Well, that's true, we do that with
16 cottage development or whatever. We work together in
17 determining impacts of cottages on lake trout lakes.
18 As far as I am concerned, I think it can be handled,
19 but I am not aware of all the other -- all the
20 ramifications of that.

21 Q. Mr. Kennedy, do you have any reason
22 to put forward why it might not be possible to handle
23 that on those rare occasions?

24 MR. KENNEDY: A. I was just reflecting
25 on the fact that the opportunities that are available

1 now and the --

2 Q. I understand the opportunities, Mr.
3 Kennedy. You will have perceived from some of my
4 previous questions that we are also interested in not
5 simply being reactive but--

6 A. And, indeed, that's the concern.

7 Q. --in being proactive.

8 A. It is the timing and I believe we
9 could discuss the timing for an appropriate
10 notification.

11 Q. So your concern is only with respect
12 to timing, and I take it you would agree with me that
13 the timing -- the best timing for that discussion is
14 prior to the preparation of any draft plan?

15 A. I believe the best timing is during
16 the area of concern planning process where any
17 consideration has been given to the alternate locations
18 as well as the environmental analysis of the
19 alternatives and that's the time at which it is best to
20 have input received from all parties, and particularly
21 the Ministry of Environment if there is concerns over
22 water quality.

23 Q. And is that prior to the preparation
24 of the draft plan?

25 A. There are portions of it occurring

1 throughout the process --

2 Q. I know it is ongoing, but is what you
3 are contemplating prior to the preparation of a draft
4 plan?

5 A. Yes, it would be.

6 Q. All right. So that you are satisfied
7 that the timing -- subject to being sure we do it
8 earlier enough, you are prepared to review those
9 specific rare instances?

10 A. I think that would be reasonable.

11 Q. Now, does anyone disagree?

12 (No response)

13 Let the record show that nobody said they
14 disagreed.

15 THE CHAIRMAN: On this panel.

16 MR. CAMPBELL: Yes, I do have, on some of
17 these, a sense of deja vu. I am told there was the odd
18 mention of certain other planning processes yesterday,
19 but we will see.

20 Q. Now, let's move to 51.2:

21 "Landings should not be located within
22 areas of concern."

23 Can you think of any circumstances when
24 it would be necessary to locate landings within the
25 areas of concern around lake trout lakes?

1 MR. WARD: A. No, I can't think of any
2 examples.

3 Q. So could we treat -- would it be fair
4 to treat that one as a mandatory prescription, it would
5 not be unduly limiting to have it as a mandatory
6 prescription; is that fair?

7 A. Yes, I think it's fair.

8 Q. And can we take it that 51.3 where it
9 says:

10 "Harvesting within areas of concern
11 should be severely restricted",
12 what we are talking about is harvesting within areas of
13 concern is to be severely restricted. Is that a fair
14 reading in that case?

15 A. That's true.

16 Q. And then it lays out the options that
17 are available in that case?

18 A. That's correct.

19 Q. Now, I think when we get to other
20 lakes, do you anticipate a larger number of exceptions
21 for road building in that case, 52.1?

22 A. There may be more exceptions just
23 based on the fact that there would be more other lakes
24 out there in the area of the undertaking.

25 Q. Now, who has to sign off that it has

1 been demonstrated that fish habitat will be protected;
2 in your region, would you have to sign off on that?

3 A. What do you mean by sign off?

4 Q. I am sorry, what I mean is you are
5 the person who has to make the call on that one; that
6 is, that in terms of expressing any opinion that
7 whatever is proposed it has been demonstrated that fish
8 habitat will be protected; are you the man that has to
9 be satisfied in that respect? It is the fisheries
10 biologist that has to be satisfied?

11 A. I think the people that sign the plan
12 are the ones that would be signing off any decision in
13 the plan, whether it is the district manager or the
14 regional director.

15 Q. All right. But here we have --

16 A. As staff advisor to regional
17 director, I assume that he would be taking my advice on
18 protecting fish habitat. He would have to weigh other
19 considerations.

20 THE CHAIRMAN: You could be overruled;
21 could you not, in effect?

22 MR. WARD: That's true.

23 MR. CAMPBELL: Q. But if it is your
24 opinion, Mr. Ward -- let me just back up slightly.

25 What it says here is that it must --

1 exceptions may be considered where it can be
2 demonstrated that fish habitat will be protected.
3 That's the only exception we are talking about; is that
4 correct?

5 MR. WARD: A. Yes.

6 Q. Now, isn't it the fisheries biologist
7 who is the person who can make the professional
8 judgment that those steps are likely -- will provide
9 adequate protection to that fish habitat?

10 You have to know a lot about that fish
11 habitat in order to make that judgment; is that not
12 correct?

13 A. That's correct, right.

14 Q. All right. Is it unreasonable then
15 to require that the regional fisheries biologist or his
16 equivalent - I may not have the title right, I am not
17 really worried about that - but that a professional in
18 the fisheries area be required to so indicate in the
19 case of an exception being made. Is that not a
20 reasonable requirement?

21 A. That is reasonable, yes.

22 Q. Does anybody else on the panel think
23 that that is unreasonable? No answer.

24 Now, if I can go on then --

25 MR. CAMPBELL: Mr. Chairman, I don't want

1 Mr. Freidin coming back to ask you again and seeing if
2 somebody now has an answer.

3 Q. I take it that nobody disagrees with
4 Mr. Ward's answer?

5 MR. PYZER: A. If I am going to agree I
6 would like to hear it again then, I am sorry.

7 MR. CAMPBELL: Q. Well, I don't have
8 this written down so I am not going to be able to give
9 it to you exactly the same, but I will try and give you
10 my understanding of it.

11 I think what I asked was whether it was
12 reasonable that in the case of exceptions being made,
13 the only exception being available when it can be
14 demonstrated that fish habitat will be protected, is it
15 not reasonable to require that a professional in the
16 fisheries areas, fisheries biologist, be required to
17 indicate that in fact, in his professional opinion as a
18 fisheries biologist or other professional person in
19 that area, in fact it is his opinion that fish habitat
20 will be protected.

21 Is that a reasonable requirement?

22 A. As a recommendation to the person who
23 is making the decision.

24 Q. No, that before the exception can be
25 approved--

1 A. Yes.

2 Q. --that the professional in that area
3 has to make a specific finding that fish habitat will
4 be protected, in his opinion?

5 A. Yes.

6 Q. I understand it is a matter of
7 professional judgment.

8 A. Sorry, I am simply clarifying that
9 you are not saying that he is making the decision when
10 clearly he is not the decision-maker, he is providing a
11 recommendation to the decision-maker. And, in his
12 professional opinion, this is his recommendation to the
13 regional director who is making the decision.

14 THE CHAIRMAN: Well, you are going
15 farther than that.

16 MR. CAMPBELL: Q. I am going much
17 farther than that, Mr. Pyzer.

18 MR. PYZER: A. You are saying that he is
19 making the decision?

20 Q. I am saying that his -- if he says:
21 It is my professional opinion that fish habitat will
22 not be protected by the steps that are being taken in
23 these exceptional circumstances, that it is then not
24 open to the regional director or anyone else?

25 A. No, I would not agree with that.

1 Q. Why not? How can you then meet that
2 condition? Does the regional director -- if he is a
3 professional fisheries biologist, fine, but if on a
4 professional basis the regional fisheries biologist
5 says: It is my opinion that fish habitat will not be
6 protected, then isn't it so that they don't even fall
7 under the exception in the first place, according to
8 these guidelines?

9 A. I am simply saying that a regional
10 director is the one charged with approving that plan
11 and he gets input and recommendation and advice from
12 many professionals.

13 And although I can't think of any right
14 now, clearly there may be a point in time when two
15 professional opinions are at variance and that is why
16 he is the regional director and he has to rationalize
17 those recommendations and make a decision.

18 Q. All right, Mr. --

19 A. So if you are suggesting that the
20 regional biologist make all of those decisions, I could
21 never support that.

22 Q. Mr. Pyzer, I think you have taken
23 this far, far farther than I ever intended.

24 What I have said is that there is a
25 specific exception in these guidelines. You agree,

1 there is a specific exception here in this paragraph?

2 A. That's correct.

3 Q. And that exception relates to the
4 protection of fish habitat; is that correct?

5 A. That's correct.

6 Q. And that the whole question of what
7 will or will not harm fish habitat is a matter of
8 professional judgment; is it not?

9 A. That's correct.

10 Q. And if the people who are paid by MNR
11 to exercise that professional judgment do not agree
12 that certain measures will protect fish habitat, that
13 in fact if they tell you that fish habitat will be
14 harmed, isn't it correct that that exception does not
15 apply any longer?

16 A. Maybe I am misunderstanding the
17 question here, but clearly if I was a regional director
18 I would respect what the biologist was telling me.

19 Q. That's all I am asking.

20 A. I would respect it, but I would still
21 make the decision and it may not be his recommendation.

22 THE CHAIRMAN: Respecting and being bound
23 by the regional biologist's opinion in that set
24 circumstance are two different things; aren't they, Mr.
25 Campbell?

1 MR. CAMPBELL: Yes, they are. Again,
2 respect is one of these words like should that has
3 slightly different meanings in the eye of the beholder,
4 apparently.

5 MR. PYZER: I had a situation, Mr.
6 Campbell in Kenora --

7 MR. CAMPBELL: Well, just a minute.

8 MR. FREIDIN: Why don't you let him
9 expand on his answer, Mr. Campbell.

10 MR. CAMPBELL: Well, he is not expanding
11 on his answer. My question is perfectly clear and it
12 is a simple one, it doesn't require any examples or
13 anything else.

14 MR. FREIDIN: Mr. Chairman, I think if
15 the witness wants to give an example to explain his
16 answer, he should be allowed to do so, if that's what
17 he wants to do and Mr. Campbell can't guess what he
18 wants to do.

19 MR. CAMPBELL: That's fine, Mr. Chairman,
20 let him go.

21 THE CHAIRMAN: Okay, Mr. Pyzer, try and
22 confine your answer to the specific question asked.

23 MR. PYZER: Well, I was trying to give an
24 example from an MOE perspective where we had spent an
25 entire year dealing with the Winnipeg River in Kenora

1 District where we have had very significant fish kills
2 and we have registered strong objections to the
3 Ministry of Environment.

4 I believe that because we have worked for
5 a year with that Ministry on those fish kills that the
6 local people support us. Recently we heard that the
7 mill had made a request to increase loading for a
8 legitimate reason. We voiced very strong objections to
9 that.

10 We were not consulted, it was not
11 discussed. I got a phone call at 4:30 in the afternoon
12 the night before the increase occurred telling me that
13 the Minister of Environment had made a unilateral
14 decision suggesting that that fish kill and the problem
15 is going to be exacerbated for whatever good reason he
16 made.

17 Now, I respect that because the Minister
18 is the Minister and he had to make a difficult
19 decision. I simply see that the regional director
20 would be in the very same situation.

21 THE CHAIRMAN: Mr. Pyzer -- let me take
22 an attempt, Mr. Campbell. The Board understands --

23 MR. CAMPBELL: You waited a long time to
24 slip that one in, Mr. Pyzer, I am sure.

25 THE CHAIRMAN: As the Board understands

1 the question asked, the regional director would still
2 be the one who approves a plan, but in a specific case
3 where there is an exception that is going to be
4 recommended with respect to these guidelines regarding
5 fish habitat, the regional director would be obliged to
6 follow the advice with respect only to the exception--

7 MR. PYZER: I understand that.

8 THE CHAIRMAN: --of the guidelines by his
9 own fish biologist.

10 MR. PYZER: Yes, and I don't support
11 that.

12 THE CHAIRMAN: And you do not support
13 that?

14 MR. PYZER: No, I don't.

15 THE CHAIRMAN: Okay.

16 MR. CAMPBELL: Q. So what you are saying
17 is that where you have got professional advice, where
18 the professional advice you are receiving on fish
19 habitat is that it will not be protected, that's the
20 finding of your professionals having looked at the
21 situation.

22 MR. PYZER: A. I understand that.

23 Q. That somehow this still allows the
24 regional director to make an exception?

25 A. If I was the regional director I

1 would want that ultimate decision-making authority.

2 MR. WARD: A. I think I can shed a
3 little bit more light on this. We have a Federal
4 Fisheries Act that basically we operate under in
5 Ontario and it is to protect all fish habitat; it
6 doesn't talk about species and it defines what the fish
7 habitat is in that Act.

8 But the Federal Government has also
9 recently issued a policy on how to apply the Federal
10 Fisheries Act, because if you take that Act literally
11 you could not do anything near water without harming
12 fish habitat to some extent and it is not something
13 that industry, our economy or anything can deal with.

14 But there is still -- the principle that
15 the policy tries to say, it tries -- the directive or
16 the guiding principle is that there is not to be any
17 net loss of habitat. And actually in southern Ontario
18 we want a net gain of habitat because we have lost
19 habitat in the last 150 years of development in
20 southern Ontario.

21 So there has been some -- in the policy
22 there is a statement where a company or an individual
23 or whatever, if they destroy habitat, can compensate
24 for that loss of habitat by creating it somewhere else.
25 In other words, to try to still get a net gain of fish

1 habitat or at least no net loss of fish habitat.

2 So it is not a black and white issue even
3 with federal legislation, never mind the Ministry of
4 Natural Resources' guideline.

5 THE CHAIRMAN: But would not the Ministry
6 of the guidelines own biologist be taking into account
7 the federal legislation?

8 It would be his decision that the fish
9 habitat would not be protected, it is not somebody
10 else's, it is not, you know, the federal ministry's
11 person or MOE's person, it is MNR's own fish biologist.

12 MR. WARD: Well, I could see myself
13 making a recommendation to my regional director and
14 saying that if we put this road in this area of concern
15 that there is a chance of having some damage to fish
16 habitat, and he would probably come back to me and say:
17 Is there any way we can mitigate that?

18 I mean this is an art--

19 MR. CAMPBELL: Q. I understand all that.

20 MR. WARD: A. --it is not a basic direct
21 science that you could, you know...

22 Q. Mr. Ward, I understand that.

23 A. All right.

24 Q. And that's why I am suggesting to you
25 that it is appropriate to rely on the professional

1 judgment of the person who knows about fish habitat as
2 opposed to the person who is generally responsible for
3 administering the district and may or may not have a
4 professional background in fish habitat.

5 What I am suggesting to you - and I am
6 asking you to -- I guess you to explain and Mr. Pyzer
7 to explain and anybody else who wants to explain on the
8 panel to me why it is unreasonable to suggest that once
9 you have gone through all that process that you talk
10 about, Mr. Ward, and the conclusion of you personally
11 as a fisheries professional is -- I believe that is
12 what currently -- that what is currently proposed I
13 cannot accept or, in my professional opinion, it has
14 not been demonstrated that fish habitat will be
15 protected, that that should be the end of the matter as
16 far as that exception is concerned.

17 And I haven't heard any rationale for why
18 that is an unreasonable proposition and, if there is
19 one, I would like you to explain it now.

20 MR. CLARK: A. I may be able to help
21 here a little. What I remember in my days as being a
22 district manager is that you are more often than not
23 dealing with tradeoffs. Now, in a lot of instances the
24 decisions --

25 Q. Now, just a minute, Mr. Clark, this

1 does not say tradeoffs, it says:

2 "An exception is permitted where it can
3 be demonstrated that fish habitat will be
4 protected."

5 And I am posing you the question that the
6 professionals in the area say it has not been
7 demonstrated that fish habitat will be protected and my
8 opinion is that it will not be protected.

9 In that circumstance, I fail to
10 understand why what I am proposing is not perfectly
11 reasonable and my question is: Could you give me a
12 rationale for disagreeing with the proposition that
13 what I propose is a perfectly reasonable position?

14 A. Could you state your proposition once
15 more?

16 Q. Yes. My proposition is: You have an
17 exception in the guidelines, a fisheries professional;
18 that is, a professional background one of your
19 fisheries biologists or equivalent, but somebody with
20 the professional training experience in fisheries, in
21 assessing impacts on fisheries habitat comes to the
22 conclusion that the proposal for a road within an area
23 of concern under the heading other lakes, in that
24 situation it has not been demonstrated that fish
25 habitat will be protected and in point of fact says

1 that it is his or her professional opinion that
2 fisheries habitat will not be protected by those steps.

3 THE CHAIRMAN: And that is after taking
4 into account mitigation measures and tradeoffs and
5 everything else, that is the bottom line?

6 MR. CAMPBELL: Well, if what --
7 mitigation measures fine, tradeoffs I have a little
8 problem with because if the tradeoff is: We can save a
9 thousand dollars but we are going to harm the fish
10 habitat, I would not include that kind of example in
11 it.

12 Q. But after whatever measures are
13 proposed, my proposition is that the local -- that the
14 fisheries biologist, this man who is full of
15 experience, local knowledge, all of these things comes
16 to the conclusion that the fish habitat will not be
17 protected, why is it not reasonable to say that is the
18 end of it, you have got to do something else?

19 MR. CLARK: A. Because I think in some
20 instances there may be other what ultimately might be
21 called higher values. There may be a threatened and
22 endangered species right next door and you are talking
23 about putting the road through in the vicinity of that
24 particular species or that particular lake. I am
25 talking very high hypothetically right now.

1 THE CHAIRMAN: But wouldn't you be
2 prevented from doing that just on dealing with
3 endangered specie guidelines themselves?

4 MR. CLARK: That's right. I would be
5 avoiding that endangered species that might force me to
6 contemplate putting that particular road in an area of
7 concern that had been identified from a fisheries
8 standpoint. That is the kind of thing I am talking
9 about.

10 THE CHAIRMAN: Well, what about no road
11 at all?

12 MR. CLARK: That would be considered as
13 an alternative.

14 The other point I would make too is that
15 I think district managers and all decision-makers have
16 a right to question the efficacy of what their staff
17 tell them, and I think Mr. Pyzer made the observation
18 earlier that from time to time it is appropriate to get
19 a second opinion.

20 And I have probably gone out of my way to
21 say that we value the professional judgment of our
22 staff, but I think I would also emphasize that. In
23 certain instances, one of the jobs that a manager has
24 to do is question carefully the recommendations that
25 are being made and, in some instances, seek further

1 advice from other sources.

2 MR. CAMPBELL: Q. All right. I am
3 prepared to accept that if he gets advice from one
4 fisheries biologist he can go to another fisheries
5 biologist and say: I am concerned about this advice,
6 would you please look at this quite independently and
7 advise me, and if that person is prepared to what I
8 call sign off on it as being acceptable, fine, it
9 doesn't worry me.

10 I am just saying, a professional has to
11 make that assessment in order to come in under the
12 exception. Now, is there anything unreasonable about
13 my proposition now?

14 MR. PYZER: A. I guess where I was
15 coming from, Mr. Campbell, is I can't think of any
16 exceptions where a regional director isn't going to
17 take the advice of his fisheries biologist.

18 MR. MARTEL: Then what is the problem?

19 THE CHAIRMAN: Why can't you just say you
20 would be bound by it?

21 MR. PYZER: Because as a regional
22 director -- as a regional director the fisheries
23 biologist clearly is not the one responsible for making
24 the decision of a timber management plan.

25 THE CHAIRMAN: No, no, not the plan, the

1 exception.

2 MR. PYZER: No, but it is all those other
3 implications within it. What is this area of concern.
4 If that means we cannot build a road that is going to
5 put a community out -- create a single industry town
6 and it goes bankrupt, if that is the tradeoff, I am
7 protecting one walleye -- one piece of walleye habitat
8 in a lake with 10,000 walleye habitats and this is
9 amounting to 100 fish and I am trading off an Ear Falls
10 against that, I will never let my fisheries biologist
11 make that decision.

12 MR. CAMPBELL: Q. I am quite prepared to
13 have you make that decision under those defined
14 circumstances, but I want some -- I don't see how that
15 falls within the nature of the exceptions.

16 What is said there is -- what you are
17 proposing is that there -- well, let me back right up,
18 Mr. Pyzer, because I can always think of apocalyptic
19 examples the other way.

20 If you are going to talk about
21 apocalyptic examples, apocalyptic examples will always
22 have to be dealt with as exceptions.

23 MR. PYZER: A. And that's the regional
24 director's job who approves the plan.

25 Q. All right. I am not talking, Mr.

1 Pyzer, with respect about apocalyptic situations, what
2 I am talking about is simply that -- I mean, my
3 original intention here was to try to make this one a
4 little easier.

5 I will take it right back to the other
6 one then, that in circumstances where the MNR fisheries
7 biologist comes to a conclusion that fish habitat will
8 not be protected, would it be administratively
9 inconvenient at that point to require that the matter
10 be resolved with Ministry of the Environment because it
11 affects a water quality guideline?

12 A. You say now that you take --

13 Q. Take this situation: If your
14 fisheries biologist says fish habitat will be
15 protected, that is the end of the matter, the
16 exception -- you are under the exception and the
17 regional director can then decide whether or not to
18 place -- to permit the road there.

19 In a situation where your fisheries
20 biologist is saying fish habitat will not be protected,
21 but you want to make it -- it is your view that the
22 road should nevertheless be permitted--

23 A. Yes.

24 Q. --that under that limited
25 circumstance the matter will be reviewed with an

-1 appropriate person at the Ministry of the Environment.

2 Is that reasonable?

3 A. I have no problem being reviewed, no.

4 Q. All right.

5 A. I would assume that is happening now
6 in any event at the open houses.

7 Q. No, no, no, Mr. Pyzer.

8 A. Well, it is, yes, yes, yes.

9 Q. It may well -- something may well be
10 happening at the open houses, I am asking for whether
11 it is reasonable to require that under that limited
12 circumstances - again, we are getting to a smaller and
13 smaller number of occasions - where your fisheries
14 biologist is saying fish habitat will not be protected,
15 you would prefer to make a decision to put the road
16 there--

17 A. I understand the scenario.

18 Q. --that the person at Ministry of
19 Natural Resources who is making that decision be
20 required specifically and independently of open houses
21 or the other formal mechanisms that you have set out in
22 the--

23 A. But, Mr. Campbell, that is my whole
24 point. My whole point is that we have a process right
25 now for resolving those called timber management

1 planning, and what I hearing you saying to me is we
2 have a system that we are proposing to resolve issues
3 to deal with areas of concern and that involves all
4 ministries, it involves your Ministry, but now let's
5 create a duplicate system for whatever reason--

6 Q. I am asking --

7 A. --to do exactly what our process is
8 designed to do.

9 Q. I am asking, Mr. Pyzer, that in the
10 limited case of this agreement which was reached
11 between the ministries, that in that circumstance,
12 where your fisheries biologist is saying that fisheries
13 habitat will not be protected, that the Ministry of the
14 Environment -- there is a requirement that the Ministry
15 of the Environment be specifically consulted and it not
16 simply depend on whether the people at the Ministry of
17 the Environment, who are just as busy as your people,
18 are able on a particular day to go to a particular open
19 house.

20 I am asking for a requirement to
21 proactively make a contact with an appropriate person
22 at the Ministry of Environment. Why is that
23 unreasonable under the case of these guidelines in
24 which both ministries have expended considerable effort
25 to achieve very worthwhile objectives?

1 A. I agree with you, I just don't see it
2 as being proactive, I see it as being reactive and I
3 would much rather see the Ministry of the Environment
4 working with us. Like, you are talking about these as
5 isolated instances, our whole area of concern planning
6 process is dealing with isolated instances.

7 From my perspective that is exactly what
8 we are dealing with is small little to - depending on
9 your interest and what stakeholder group you are - to
10 you, that is extremely important, but in the total
11 scheme of things it is small isolated area and we don't
12 postpone those sorts of things, we don't defer them to
13 other people, we deal with them through the planning
14 process.

15 And I understand we have put together a
16 good process that involves all ministries, all
17 agencies, we have a number of steps within which we
18 resolve those issues and now you seem to be suggesting
19 to me to create a duplicate to that.

20 Q. No, I am just asking that if this
21 particular problem arises under the guideline that the
22 Minister of the Environment be specifically contacted
23 and consulted in its resolution.

24 A. Well, I would agree to that because
25 we haven't defined what specifically contacted means.

1 I interpret that one way, yes, I will agree with that
2 in my context, certainly.

3 Q. Well, Mr. Pyzer, I think it is
4 perfectly clear that I am not suggesting that that be
5 done by having the matter recorded on a map and to be
6 fortuitous circumstance of whether the Minister of the
7 Environment representative worrying about those
8 particular kinds of concerns turns up on a particular
9 afternoon at a particular open house and happens to
10 stumble on this matter.

11 I am asking whether it is reasonable to
12 require, under those circumstances, that a simple
13 contact be made by the decision-maker at your Ministry
14 with an appropriate person at the Ministry of the
15 Environment to simply say: We have got a little
16 unusual situation here under the guidelines, could we
17 pop around and talk to you about it and review it with
18 you on a specific basis.

19 Now, is that unreasonable?

20 A. Not at all. In that context I would
21 agree with you.

22 Q. Thank you.

23 THE CHAIRMAN: Mr. Campbell, perhaps for
24 the benefit of the reporters we could have maybe a five
25 minute break. We will come right back and then proceed

1 through to four o'clock.

2 MR. CAMPBELL: That would be fine, Mr.
3 Chairman.

4 THE CHAIRMAN: Thank you.

5 ---Recess taken at 3:20 p.m.

6 ---Upon resuming at 3:35 p.m.

7 THE CHAIRMAN: Thank you, be seated.

8 MR. CAMPBELL: Somebody has pushed my
9 mike into the coffee.

10 THE CHAIRMAN: Mr. Hunter dropped his
11 watch in the coffee last time.

12 MR. CAMPBELL: Mr. Freidin is therefore
13 in good company.

14 MR. FREIDIN: It will help make the
15 examination flow.

16 MR. CAMPBELL: Talk to the witnesses.

17 Q. Mr. Pyzer, I want to put another
18 little proposition to you about all of this that I
19 think is perhaps pertinent to --

20 MR. COSMAN: Mr. Chairman, sorry, just
21 before my friend continues. I had just been talking to
22 a few people at the break, and given the amount of time
23 that we have, either -- I would just like to make a
24 suggestion to you.

25 If you are to keep the schedule, we can't

1 stop at four today because, as it looks, we will be
2 arguing on Thursday and it is just impossible, knowing
3 how much my friend has left, and I am just wondering if
4 you can give some direction on that so we can make some
5 arrangements for flights.

6 THE CHAIRMAN: Well, it is our view that
7 we can continue on tomorrow with Mr. Campbell, we can
8 still continue on with Mr. Freidin and we can argue it
9 in the afternoon through to the end of the day, and if
10 it is necessary for you to leave tomorrow you can leave
11 on a nine o'clock flight tomorrow night.

12 MR. COSMAN: It is not the nine o'clock
13 flight I am worried about, Mr. Chairman, I am on that
14 flight, it is the next day. I expect Mr. Campbell will
15 take a good chunk of the morning, perhaps he can speak
16 to it, but I just think, are we going to even be
17 hearing argument tomorrow afternoon?

18 THE CHAIRMAN: We will, at some point.

19 MR. FREIDIN: Mr. Chairman, I would just
20 like to raise -- I don't know how long Mr. Campbell
21 might be tomorrow morning, but depending on how long he
22 goes perhaps in cross-examination, I may be requesting
23 some time to prepare re-examination in relation to the
24 issues that he raises tomorrow.

25 I will be ready tomorrow in relation to

1 the issues he has raised up to the end of tonight, but
2 I just advise the Board of that possibility as well.

3 THE CHAIRMAN: Mr. Campbell, whereabouts
4 are you, do you think?

5 MR. CAMPBELL: Well, Mr. Chairman, I have
6 to say that I am not very far along. You will have
7 some sense that I thought this stuff was sort of the
8 easy stuff and we might get to the hard stuff later on.
9 There has been -- obviously that is not the case, and
10 so it is very difficult for me to tell, very difficult.
11 It is simply not -- I have no easy way to estimate any
12 more.

13 MS. SWENARCHUK: Mr. Chairman, when I
14 suggested breaking at four it was because it looked
15 convenient. If it is not convenient, we can certainly
16 sit longer today. I won't object to that.

17 THE CHAIRMAN: Well, maybe we will
18 consider going a little further today with you, Mr.
19 Campbell, than four o'clock and allowing counsel to
20 have their discussions after you are through.

21 MR. FREIDIN: Finish today?

22 THE CHAIRMAN: No, I don't mean finishing
23 Mr. Campbell completely necessarily today, Mr. Freidin.

24 MR. FREIDIN: Did you say going beyond
25 four o'clock?

1 THE CHAIRMAN: Yes.

2 MR. FREIDIN: I just ask because we
3 contacted Ms. Murphy to be over here at four o'clock
4 for the meeting, but we can easily call her. I just
5 want to know, are we going to go past four o'clock?

6 THE CHAIRMAN: Well, I think in fairness
7 I think we should try and get more of Mr. Campbell's
8 examination finished today, and so instead of breaking
9 at four perhaps we could go to five or even 5:30, and
10 you may find that that puts Mr. Campbell sort of back
11 on track with respect to what might be left for
12 tomorrow.

13 Is that a possibility, Mr. Campbell?

14 MR. CAMPBELL: That is a possibility, Mr.
15 Chairman.

16 Q. Mr. Pyzer, when you spoke of the
17 Ministry of Environment coming to the various open
18 houses and discussing the concerns in respect to these
19 guidelines and so on on those occasions, I guess what I
20 would like to put to you is a slightly alternate
21 scenario and ask whether this isn't a reasonable
22 approach from my client's perspective.

23 I put to you the proposition that my
24 client's concerns are embodied in these guidelines with
25 respect to the water quality aspects. You accept that,

1 do you?

2 MR. PYZER: A. Yes, I do.

3 Q. And that if the Ministry of the
4 Environment is able to rely on these guidelines -- let
5 me put it more strongly: Isn't it reasonable for the
6 Ministry of the Environment to want to be able to rely
7 on these guidelines so that at least on these kinds of
8 issues that are encompassed by these guidelines, they
9 can be satisfied -- they can be assured that in fact
10 what is contemplated by these guidelines is in fact
11 happening and they don't need to invest -- having
12 invested the necessary staff time in getting these in
13 place, they don't need then for each of the hundred
14 management units across the area of the undertaking to
15 go to each open house, examine each area of concern
16 file, examine all of the supplementary information, all
17 of the values maps, all of the other information and
18 databases in order to make a determination in the
19 course of that process as to whether the guidelines are
20 in fact, according to their understanding, being
21 applied.

22 Now, isn't that a reasonable position for
23 my client to take?

24 A. Yes, I agree.

25 Q. So is it not terribly important then

1 that if my client is going to rely on that, which it
2 fully wishes to do, I will advise you, that if they are
3 going to rely on that, they must be able to rely on an
4 absolutely crystal clear delineation of when
5 compromises are being made that are not contemplated by
6 the guidelines?

7 Isn't it terribly important for them to
8 be able to place that reliance?

9 A. Yes.

10 Q. So that in the situation where your
11 professionals -- and isn't it reasonable for the
12 Ministry of Environment to rely -- to be relying on the
13 fact that your professionals' opinions on protection of
14 fish habitat are being in fact acted on?

15 A. Correct.

16 Q. And so that if -- given that
17 answer -- given that answer, isn't it fair for us to be
18 suggesting that the question of whether fish habitat
19 will be protected is a question for the professional
20 fisheries biologist?

21 A. He is certainly an important person,
22 yes.

23 Q. But what I am suggesting to you is
24 that if you have any difficulty with this concept --
25 well, let me back up slightly.

1 I suggest to you that even from our point
2 of view, never mind from yours, it is a poor second
3 choice to have to put time in analyzing a particular
4 situation if your fisheries biologists, like Mr. Ward,
5 have already told you that the fish habitat is not
6 protected?

7 A. Correct. Mr. Campbell, the only
8 point I was trying to make -- Mr. Martel made an
9 excellent point this morning, we were debating the
10 whole question of whether we required a sociologist on
11 staff and Mr. Martel started talking about Ear Falls
12 and we talked about some of the single industry towns.

13 I am extremely sensitive to that myself
14 and the only point I am trying to make is when we have
15 an area of concern relative to fisheries, I simply
16 don't want my fisheries management person - I wouldn't
17 if I was the regional director - want him to make that
18 decision and him having the ultimate decision on
19 whether that single industry town was going belly up or
20 not over one walleye spawning ground that may be one
21 thousand.

22 I agree with virtually everything you
23 have said, and prior to coffee I thought we had the
24 agreement that if the Ministry were to do that in terms
25 of us contacting you and very quickly coming to

1 agreement and having a meeting on a specific issue, I
2 don't have a problem with that.

3 I do have a problem with setting up
4 duplicate systems, and I have a problem when more and
5 more of our stakeholder groups are saying they don't
6 want to come out to our meetings, more and more of them
7 don't want to come out, they don't want to participate,
8 and yet I am being criticized as a district manager
9 when people don't show up at my meetings.

10 Q. But, Mr. Pyzer, isn't the situation
11 quite different in this case because, as the Ministry
12 has advised us in many of our interrogatories, this is
13 the only example where the Ministry has consented to
14 mandatory minimum information requirements and
15 mandatory prescriptions and we rely on those, and I
16 would suggest to you that we are entitled to rely on
17 them.

18 A. Yes.

19 Q. So that isn't it quite a different
20 situation when you know that we are relying on them;
21 isn't it quite a different situation - and I don't know
22 who this everyone else is who is coming to you and
23 asking for special treatment - but where time and
24 effort has been made to design something that leads to
25 an efficient use of both your resources and my client's

1 resources, that that should be respected and that the
2 professionals' opinions on matters like this are being
3 relied on by my client and should not be subject to a
4 discretionary overruling by the decision-makers in the
5 Ministry of Natural Resources?

6 A. But quite clearly the biologist is
7 responsible for biological matters; he doesn't have all
8 of the issues that are at hand, he is not familiar with
9 the the wildlife issues, he is not familiar with the
10 tourism issues, he is not familiar with all of the
11 issues that the public has brought forward, the forest
12 companies issues, the native reserves, the effect on
13 the local municipality. Clearly, the biologist cannot
14 make that decision unilaterally.

15 Q. But he is --

16 THE CHAIRMAN: Mr. Campbell, unless this
17 particular issue is going in a different direction or
18 somewhere else, the Board feels that it has heard
19 representations both ways, both your questions to Mr.
20 Pyzer, Mr. Pyzer's responses to you, we are not sure it
21 is going to be resolved in a way that is satisfactory
22 to what you would like to hear or in a way that is
23 going to accommodate what Mr. Pyzer appears to be
24 maintaining as the Ministry's position.

25 MR. CAMPBELL: All right. If I can just

1 summarize where I think we are and make sure that Mr.
2 Pyzer and any other member of the panel who wants to
3 comment on or in agreement on it, it is that in the
4 particular example we spoke of where the fisheries
5 biologist is not satisfied that fish habitat will be
6 protected, that the decision-maker at MNR will contact
7 an appropriate person at MOE and we will work that out,
8 the mechanics of that?

9 THE CHAIRMAN: Do you agree with that,
10 Mr. Pyzer?

11 MR. PYZER: Yes, I agreed before coffee
12 break to that.

13 MR. CAMPBELL: Q. All right. And
14 everybody on the panel feels that that is a reasonable
15 solution to this concern?

16 Is there anyone who disagrees with that
17 proposition?

18 MR. WARD: A. I am not a hundred per
19 cent satisfied with that. To start with, I don't
20 want -- I don't know whether Ministry of Environment
21 has fish habitat experts, you know, making judgment on
22 whether we are protecting fish habitat adequately or
23 not.

24 I think in terms of water quality, if it
25 is a water quality concern, we are talking about other

1 lakes which have lesser standards of water quality than
2 our cold water lakes and, again, we are talking about
3 roads and we haven't discussed the environmental
4 guidelines for access roads and water crossings, but we
5 have water quality -- we made water quality provisions
6 in those guidelines as well, so it may be more
7 appropriate to say:

8 Well, we are not covering it off
9 necessarily in these guidelines, but we will be
10 covering them off in our road guidelines. So that is
11 another thing that I see that should be considered as
12 well.

13 Q. Mr. Ward, I think this whole
14 discussion started off with whatever steps were taken,
15 whatever steps were applied, whatever mitigation
16 measures, all the construction practices, you still
17 came to the conclusion that even applying all of that
18 it wouldn't be protected. I think that is the kind of
19 situation we are discussing.

20 Now, with that clarification, do you
21 still have the same concern? I am not saying that
22 Ministry of the Environment wants to take away that
23 decision-making from Mr. Pyzer and his cohorts, all I
24 am saying is that under that unusual circumstance
25 surely these guidelines having been worked out between

1 the two organizations in those unusual circumstances
2 there has to be a contact made?

3 A. Well, I would just like to say that I
4 think some of those concerns will be addressed in the
5 road guidelines.

6 THE CHAIRMAN: Well, do you object to
7 there being the contact in those unusual circumstances?

8 MR. WARD: I don't think there will be
9 any problem with it, but I just see it as another step
10 in the process in terms of timing and feedback that we
11 get, it may delay things.

12 THE CHAIRMAN: Well, part of it is to
13 arrange when that contact will take place and something
14 that is satisfactory to both ministries. But apart
15 from the logistics of it, do you see any problem with
16 having to make the contact in those unusual
17 circumstances prior to the decision being made?

18 MR. WARD: If Mr. Pyzer agrees to that I
19 don't have any problem with it.

20 THE CHAIRMAN: Back to you, Mr. Pyzer.

21 MR. PYZER: I agree.

22 THE CHAIRMAN: Mr. Campbell, I think we
23 should move on.

24 MR. CAMPBELL: Thank you.

25 Q. I am going to try and sort of -- we

1 have talked a lot of time on that particular example
2 and you will be aware, Mr. Pyzer, that the guidelines
3 are full of similar examples and statements?

4 Do you agree with that proposition? We
5 are going to have this same discussion on about 15 of
6 these things if we go through them seriatum; is that
7 correct?

8 MR. PYZER: A. We only will if you are
9 asking me to let the district biologist make those life
10 and death decisions as we talked about this morning in
11 terms of single industry towns and impacts on other
12 users.

13 If that is the question, I don't think I
14 will ever agree that the biologist should make -- have
15 the ultimate authority to make those decisions, I am
16 sorry.

17 MR. MARTEL: Could I ask a question then
18 because what would happen if the biologist disagreed
19 with the regional director, how does that concern
20 become public knowledge or a concern that the public
21 can deal with in addition to MOE, if you don't want the
22 biologist to be able to hold the process up, who in
23 fact becomes the one that makes the disagreement
24 public, if I can put it that way, or does it just get
25 buried?

1 MR. PYZER: Well, Mr. Kennedy can talk
2 about the document and the process but, clearly, the
3 very first step that would be identified is an area of
4 concern and what that area of concern was and it would
5 be identified very early that there was a piece of
6 critical fish habitat there, and so the public has seen
7 that from day one.

8 And, in terms of the decision, if the
9 road was going through it it would be logical to ask:
10 Well, what protection was there for that critical fish
11 habitat? Why was this an area of concern, and I see
12 normal operations, if you will, occurring within it.

13 MR. MARTEL: Are you saying there are not
14 circumstances when, through informal discussions, there
15 would not be a difference of opinion between the
16 biologist and the director and the director makes the
17 decision that he doesn't want that, he wants to proceed
18 and he doesn't want the hassle of a difference of
19 opinion becoming public knowledge?

20 MR. PYZER: As I mentioned at the very
21 beginning, at the outset, I cannot think of a single
22 occasion where I have overruled a district biologist.
23 No, I can't think of one occasion.

24 MR. MARTEL: But there have been
25 disagreements with various people with MNR -- within

1 MNR where MNR didn't want certain information to come
2 forward where in fact someone was penalized for
3 bringing it forward.

4 MR. PYZER: I am not aware of that.

5 MR. MARTEL: Well, I am sure you are.

6 MR. PYZER: Honestly I am not.

7 MR. MARTEL: You are not aware of Mr.
8 McAlpine?

9 MR. PYZER: Pardon me?

10 MR. MARTEL: You don't know about Mr.
11 McAlpine?

12 MR. PYZER: I know the name but I
13 certainly don't know any of the circumstance. It is
14 the truth, I am sorry.

15 THE CHAIRMAN: Well, can you figure out,
16 Mr. Campbell, a way to deal with each of these
17 concerns, or do you want to go through them one by one
18 or what are you suggesting, the same type of
19 questioning that we have had for the last half hour or
20 so?

21 MR. CAMPBELL: Q. Mr. Pyzer, are you
22 willing to accept the same kind of conclusion:
23 Throughout the guidelines there are various places
24 where there are things -- for instance, if I go over to
25 the next page there is on cold water streams:

1 "Roads should not be constructed within
2 areas of concern except where necessary."

3 MR. CAMPBELL: I think the problem that I
4 have with this exercise, Mr. Chairman, I guess really -
5 if I try and make a general rule - is that in some
6 cases -- we have already had cases on the previous page
7 where should not is used in a way that is absolutely
8 mandatory.

9 At the top of, for instance, the right
10 column on 1, we see that harvesting within areas of
11 concern should be - and Mr. Ward quite properly agreed
12 that its use in that sense -- in that occasion was is
13 to be or it is an absolute mandatory, in other cases,
14 they seem to be interpreting should be in a much less
15 restrictive sense and I do have a concern about that.

16 Q. And I guess, Mr. Pyzer, my general
17 question would be one of Mr. Ward having agreed that
18 there were both mandatory minimum information
19 requirements and mandatory application of
20 slope-dependent reserves, are you disagreeing with him
21 in those answers?

22 MR. PYZER: A. Mr. Campbell, I didn't
23 prepare the guidelines and having read those sections,
24 all I can think is that if the word must -- if the word
25 must and that is what -- if must should have been there

1 I would have thought must would have been there, you
2 must do this, but it says you should not do that and
3 that tells me that in the 9,999 cases you will follow
4 the guidelines.

5 But if there is a particular situation
6 where, for whatever reason, you cannot, then that is
7 why it reads should and not must.

8 Q. All right. But the exceptions that
9 you are putting forward are ones where it is simply not
10 possible--

11 A. That's right.

12 Q. --to follow the guidelines?

13 A. Correct.

14 Q. All right. And that is not a matter
15 of -- I mean, obviously, if you have got two cold water
16 lakes, the kind of situation you proposed, you have got
17 a buffer between them that is 170 metres distance
18 between the two lakes and you put a road right down the
19 middle, you have to to get somewhere, then you are not
20 90 metres and that is because two large lakes, it is
21 simply impossible to get to the other side without
22 doing it. That is the kind of situation you are
23 talking about where it is not possible?

24 A. That is certainly one example.

25 Q. No --

1 A. Mr. Campbell, again, it is the Ear
2 Falls type situations. Again, as a district manager I
3 am not the regional director who makes that decision,
4 but as a regional director I could not accept the fact
5 that the biologist was saying because there is one
6 spawning ground there that that was -- I have no say in
7 that matter.

8 Clearly, if I, as the regional director,
9 am going to be signing that document I cannot let -- I
10 cannot give up that part of the -- that could be the
11 most important critical decision in the entire
12 document.

13 Q. Maybe we can design a solution this
14 way. You do understand that we are relying on the
15 fact -- my client is relying on the fact that there are
16 mandatory minimum information requirements and
17 mandatory application of slope-dependent reserves?

18 You understand that they are relying on
19 that?

20 A. Yes, I do.

21 Q. Now, maybe we can solve --

22 A. If I could make one other point. I
23 am not the Ministry of Natural Resources on this point.
24 You asked this panel for personal opinions and I am
25 giving you my personal opinion.

1 Q. No, no, Mr. Pyzer, I am asking this
2 panel for the position of the Ministry of Natural
3 Resources on this matter. I asked Mr. Ward questions
4 as -- where I may well ask him his professional opinion
5 as a fisheries biologist, but I am taking this panel,
6 when I take answers, as binding upon the Ministry of
7 Natural Resources and if that is not so, with respect,
8 I think you are under an obligation to say so.

9 A. Mr. Campbell, you asked Mr. Ward a
10 specific question and then you said does the rest of
11 the panel agree with that, and I am simply telling you
12 I don't in terms of that interpretation.

13 Now, the Ministry -- I am not a regional
14 director and that is whose position we are talking
15 about and whose decision-making we are talking about.

16 I don't know, maybe every regional
17 director would feel comfortable about letting his
18 regional biologist make those critical decisions. I am
19 just saying if I was the regional director, and that
20 was your question to me, I would not feel comfortable
21 with that, nor would I support it.

22 THE CHAIRMAN: Well, who on this panel
23 speaks for the Ministry in terms of policy?

24 MR. CLARK: In a general way, in terms of
25 policy, I do. I don't pretend to be able to speak on

1 all issues that relate to the Ministry of Natural
2 Resource, but where I can I will.

3 THE CHAIRMAN: Well, are you in a
4 position to answer Mr. Campbell's concerns with this
5 particular issue on behalf of the Ministry?

6 MR. CLARK: I very much appreciate the
7 direction that Mr. Campbell is going. I think we want
8 very much to facilitate the process, but I do think if
9 Mr. Campbell is listening he will sense a great deal of
10 hesitancy on our part about creating black and white
11 rules and situations that aren't always black and
12 white, and I think that is why we are hesitant in this
13 particular instance to make a definitive answer.

14 And I think the reason we are hesitant to
15 do so, because in our experience as managers we found
16 that there are situations where these decisions aren't
17 clear and that there is a tremendous responsibility on
18 the part of the local manager to make decisions and
19 recommendations which are subject to review at higher
20 levels.

21 THE CHAIRMAN: Okay, one more question.
22 I am going to suggest a solution, Mr. Campbell.

23 Can you just tell me about the chronology
24 of the development of the guidelines and the Ministry
25 of the Environment's input into the actual wording, if

1 any, that went into those guidelines and how they
2 relate to the agreement between the two ministries?

3 In other words, did the Ministry of the
4 Environment have an input into the development of these
5 guidelines using the words should instead of shall and
6 creating these exceptions which seem to be dated April,
7 '88, which seem to be after the date of the agreement
8 between the two ministries which seems, from my copy,
9 to have occurred back in '87, I think.

10 MS. SWENARCHUK: Mr. Chairman, isn't
11 this--

12 THE CHAIRMAN: Sorry, back in May of
13 '88--

14 MS. SWENARCHUK: --after the guidelines.

15 THE CHAIRMAN: --with the guidelines
16 occurring in April of '88?

17 So I guess what I am asking, Mr.
18 Campbell, was there any consultation with the Ministry
19 into the actual wording of the guidelines?

20 MR. CAMPBELL: Can I have a moment, Mr.
21 Chairman.

22 Mr. Chairman, maybe the easiest way to
23 deal with it is if you go to Attachment 3 on Exhibit
24 5A, it is page 16 I believe of the package.

25 And remember, Mr. Chairman, that this

1 document is the one which the witnesses have agreed is
2 the controlling document for that matter, that the
3 other documents are subsidiary to this agreement.

4 Q. Now, Mr. Pyzer, I would like to read
5 to you -- I guess it is Mr. Clark, I would like to read
6 to you paragraph 5 at the bottom of page 16:

7 "Certain minimum information must be
8 available in order to make decisions in
9 areas adjacent to water bodies, this
10 information includes fish species.
11 Critical fish habitat normally is
12 determined through shoreline cruises and
13 mapping and shoreline slope. In the
14 absence of this minimum information, a
15 90-metre shoreline zone with only limited
16 selection harvesting will be established.
17 If slope is known, the area will vary
18 between 30 and 90 metres."

19 Now, would you agree with me that that
20 sets out mandatory minimum prescriptions for areas of
21 concern next to water bodies?

22 MR. CLARK: A. Yes.

23 Q. And it gives -- and there is nothing
24 there about any exception whatsoever?

25 A. No, there is not.

1 Q. And that document is attached to a
2 document which is executed by your Deputy Minister; is
3 it not?

4 A. I believe it is.

5 Q. And is MOE -- and I would suggest to
6 you what the conclusion is that we have taken from
7 this, is it not correct, that the Ministry of the
8 Environment is entitled to rely on that?

9 A. I believe they are.

10 Q. Now, is anything that I have
11 suggested as being mandatory with respect to the
12 application of those guidelines outside that specific
13 agreement by your Deputy Minister?

14 A. I am not too sure what you mean, but
15 could you perhaps just rephrase that. I am not
16 disagreeing with what's written in 5, I am just not
17 sure what the point is that you are making.

18 Q. Well, the point is -- I will state it
19 as simply as I can. Do you agree with me - and I will
20 break down into a number of propositions.

21 First of all, what is contemplated here,
22 the areas of concern will be established around
23 shorelines and Mr. Ward has talked about all of the
24 locations where areas of concern will be identified; is
25 that correct?

1 A. Correct.

2 Q. And within those -- in respect of
3 those water bodies, be they streams to cover the whole
4 gambit of water bodies in which an area of concern is
5 established, do you agree that this contemplates that
6 minimum information must be available to make
7 decisions?

8 A. That's what it says, yes.

9 Q. Is there any ambiguity in your mind
10 about that, that certain minimum information must be
11 available in order to make decisions in areas adjacent
12 to water bodies? Any ambiguity about that whatsoever?

13 A. No.

14 Q. It then goes on to say that those
15 areas of concern would result in 30 to 90-metre
16 slope-dependent reserves. Isn't the meaning of the
17 rest of the paragraph--

18 A. Yes.

19 Q. --and the establishment of those 30
20 to 90-metre slope-dependent reserves absolutely
21 mandatory?

22 A. That's the way it reads with respect
23 to timber harvesting.

24 Q. And is not the construction of roads
25 and provision of access, all of those other activities,

1 is that not part of what is normally considered to be
2 timber harvesting activities?

3 A. No, I think that we have made a very
4 clear distinction in the context of the EA between
5 harvesting, access, renewal and maintenance as separate
6 activities.

7 Q. Now, just a minute. Is what you are
8 saying now --

9 A. What I am saying is what's written
10 here, it refers specifically to timber harvesting
11 and...

12 Q. You take that to be only with respect
13 to harvest activities, you don't take any of this under
14 the heading to be in relation to roads or other
15 harvest-related activities; is that what you are
16 saying?

17 A. Well, it says timber harvesting here,
18 Mr. Campbell.

19 Q. I know what it says, Mr. Clark. I
20 want to know what MNR's position is. Does everything
21 under 2 only apply to the cutting down of trees as
22 opposed to all of the other activities -- timber
23 harvesting as opposed to the other activities that make
24 up the undertaking?

25 I would suggest to you, Mr. Clark, that

1 it is quite clear in the context that what we are
2 talking about here is the range of timber management
3 activities. Is MNR's understanding of that different?

4 A. I am not absolutely sure, to be quite
5 honest with you. I suspect that you are right.

6 THE CHAIRMAN: Mr. Campbell, I was going
7 to suggest a bit earlier if you were going to go back
8 to your original line of questioning with Mr. Pyzer as
9 to notification to the Minister of the Environment, and
10 seeing there was some difficulty as to who was speaking
11 on behalf of the Ministry, what the Ministry's actual
12 position is, that you might consider putting your exact
13 request or position in writing to the Ministry and we
14 would direct the Ministry to respond in writing
15 specifically with their position, being a Ministry
16 position, instead of having the witnesses stating their
17 opinions but not sure whether each of them has the
18 right position to bind the Ministry as a whole.

19 It would, at least for the purposes of
20 the Board, clarify the Ministry's position and, of
21 course, clarify MOE's position. Whether there will be
22 agreement or the parties will be ad item on the issue
23 is another question, but at least we will have it in a
24 concise manner as to exactly what you are requesting
25 and exactly what the Ministry's position is; the

1 Ministry being the Ministry of Natural Resources.

2 MR. CAMPBELL: Well, Mr. Chairman, my
3 question is really quite simple and I think I would
4 like to have an understanding from this panel.

5 THE CHAIRMAN: But our problem is is that
6 we are not getting a clear message that the
7 understanding of this panel is necessarily binding the
8 Ministry as a whole as to a particular position on this
9 particular issue.

10 I think it would be more helpful to the
11 Board if we knew what the position of the Ministry of
12 Natural Resources was in response to your request.

13 Mr. Freidin, would that be difficult in
14 that format for the Ministry to be able to respond in
15 writing as to its position?

16 MR. FREIDIN: I don't believe so.

17 THE CHAIRMAN: And which it would
18 consider binding on itself if it took a particular
19 position?

20 MR. FREIDIN: That's fine.

21 THE CHAIRMAN: And In that, Mr. Campbell,
22 you might consider including the question in a broad
23 enough fashion to cover any of the other exceptions to
24 the guidelines that may appear in other clauses, if you
25 want some kind of prior notification to MOE ahead of

1 time and that kind of thing.

2 MR. CAMPBELL: Counsel always find it
3 difficult to resist such invitations when they are
4 handed out from the Chairman of the panel, Mr. Chairman
5 and I will --

6 THE CHAIRMAN: Well, we are just looking
7 for a way to somehow get around the impasse of you
8 putting forward your client's position and the panel
9 trying to respond but not quite sure whether or not it
10 is in fact their Ministry's position as a whole.

11 MR. CAMPBELL: I will attempt to deal
12 with it that way, Mr. Chairman.

13 MS. SWENARCHUK: Mr. Chairman, while I
14 agree that your proposal will settle the question at
15 its broadest scope, I have some sympathy with Mr.
16 Campbell's situation because I now feel that as counsel
17 proceeding through the cross-examinations, et cetera, I
18 was relying on this panel to give me what I assumed was
19 the Ministry's position on all the questions I asked,
20 and certainly the questions relating to the fisheries
21 guidelines...

22 THE CHAIRMAN: I am not suggesting that
23 they have not, but it appears, with this specific
24 issue, that the Ministry of Natural Resources,
25 vis-a-vis this panel, that their position is not

1 necessarily the opinion of this particular panel
2 witness.

3 MS. SWENARCHUK: I asked questions
4 relating to implementation of guidelines and
5 enforcement as well. I will go back and take another
6 look at the transcript, but I am a little concerned now
7 too and I wonder on how many issues the replies that we
8 received from the panel do not amount to the position
9 of the Ministry.

10 THE CHAIRMAN: Mr. Freidin, could you
11 assuage Ms. Swenarchuk's concerns in that regard?

12 MR. FREIDIN: I believe I can say that
13 the information which was given by this panel in
14 relation to matters other than the one we are just
15 discussing now can be taken as the position of the
16 Ministry.

17 This particular matter, we are now
18 getting into an interpretation of various matters which
19 appear to depend on what was discussed during meetings
20 and negotiations and whatever within the Ministry of
21 Natural Resources and the Ministry of the Environment,
22 I think are particularly difficult for these witnesses
23 to answer because none of them were directly involved
24 in those discussions.

25 THE CHAIRMAN: And they were at the

1 Deputy Ministry level, I believe.

2 MR. FREIDIN: I can advise that Mr. Allen
3 will be the fisheries biologist in Panel No. 10
4 involved in both the development of these guidelines
5 and the discussions with the Ministry of the
6 Environment in relationship to them.

7 THE CHAIRMAN: Well, just to take it in
8 two segments. The answer of this panel to Ms.
9 Swenarchuk's questions in cross-examination are the
10 position of the Ministry of the Environment?

11 MR. FREIDIN: That's correct.

12 MR. PYZER: Natural Resources.

13 MR. FREIDIN: Natural Resources.

14 MS. SWENARCHUK: MNR.

15 THE CHAIRMAN: Sorry, I am getting mixed
16 up. Are MNR's position and I think Mr. Freidin has
17 indicated that that is so. So I think your concerns
18 can be alleviated to that extent.

19 MS. SWENARCHUK: I will rely on that.

20 MR. CAMPBELL: Mr. Chairman, I want to be
21 clear about one thing in doing this and I am quite
22 prepared to proceed along the lines you have laid.

23 We have been assured in interrogatory
24 answers that, for instance, with respect to the minimum
25 information requirements that the Fish Habitat

1 Guidelines are unique in that they are the only ones
2 with minimum information requirements.

3 We have understood that the application
4 of certain slope-dependent reserves were mandatory
5 under specific situations that are outlined in the
6 guidelines.

7 I may not be hearing these witnesses
8 correctly, but what I hear them saying is that there
9 are no mandatory minimum slope-dependent reserves, that
10 I cannot -- that my client cannot rely on that because
11 there could always be exceptions.

12 Now, if I am hearing them incorrectly I
13 would like to give them the opportunity to state so
14 right now, because then it seems to me that the area of
15 potential problem to be sorted out is vastly reduced or
16 is vastly different than would be the circumstance
17 where they are actually agreeing that there are
18 mandatory minimum slope-dependent reserves, which is
19 what I thought I had agreement to already, but I am now
20 concerned that I may not.

21 And while I understand the panel is not
22 the one who necessarily did all the negotiating for all
23 of this - and you will understand I am sure that all of
24 the negotiations were not carried out at the Deputy
25 Minister level - I do understand that Mr. Ward was at

1 least involved in those discussions - I may be wrong in
2 that and he can advise us if I am - but I am concerned
3 that as to what these gentlemen -- what their view of
4 it is because they are the ones that we have been told
5 are the ones who were out in the field and are applying
6 all of these guidelines in a way that will protect the
7 various elements of the environment that are of concern
8 both within my client's mandate and other areas of the
9 environment.

10 And that really is something that I think
11 I would like to hear from this panel on and now.

12 THE CHAIRMAN: Well, could I make this
13 suggestion: Could I suggest that that question be put
14 over until your examination tomorrow morning -- the
15 continuation of your examination tomorrow morning and
16 they can have the opportunity tonight to discuss it
17 amongst themselves to come up with some kind of
18 position on behalf of the Ministry.

19 MR. PYZER: Mr. Campbell, if I can be
20 helpful. Did we not come to an agreement prior to
21 coffee break that they were mandatory, they were
22 minimums and where we were going to do an exception, if
23 you will, that we would be contacting the Ministry of
24 the Environment and discussing that?

25 THE CHAIRMAN: Well, the difficulty, Mr.

1 Pyzer, is is that occurs in more than one place. That
2 may be with respect to the one item you dealt with
3 before coffee break, but it occurs in a number of
4 areas.

5 MR. CAMPBELL: I think if Mr. Pyzer is
6 prepared to agree that in the similar cases in the
7 guidelines and the general descriptions in the
8 introduction and elsewhere where there is wording of
9 that type that concerns me, that we simply resolve it
10 that way, then I am very -- if that's what he is
11 telling me, that from an operational view he is
12 prepared to do that and the Ministry takes that
13 position, then I think probably the problem is gone,
14 but I will need to get instructions on that, which I
15 will do overnight.

16 THE CHAIRMAN: And would you get
17 instructions overnight, Mr. Pyzer, or arrive at a
18 conclusion overnight if that's the position of the
19 Ministry of Natural Resources?

20 MR. PYZER: Yes, sir.

21 THE CHAIRMAN: All right. Mr. Campbell,
22 would you have objections if counsel were permitted to
23 discuss this one issue with this panel overnight?

24 MR. CAMPBELL: Absolutely none, Mr.
25 Chairman. In fact, I am quite happy to meet with Mr.

1 Freidin and with the witness panel team so that perhaps
2 we can arrive at a mutually satisfactory conclusion to
3 this which we can both recommend to our clients. I
4 think that might be the appropriate way.

5 THE CHAIRMAN: I think it is in the
6 interest of the Board and the hearing itself to have
7 this issue resolved, as much as it can be resolved,
8 between the parties.

9 MR. CAMPBELL: I agree, Mr. Chairman,
10 absolutely.

11 MRS. KOVEN: This is an interesting
12 exercise in policy-making, Mr. Campbell.

13 MR. CAMPBELL: I always say that one of
14 the great fascinations of doing administrative counsel
15 work, Ms. Koven, is that it involves you in a very real
16 and direct way in public policy-making as opposed to
17 simple disputes between parties.

18 What I think we seem to have here is the
19 joys of both and I agree.

20 THE CHAIRMAN: Or the problems associated
21 with both?

22 MR. CAMPBELL: Well, for lawyers, as Mr.
23 Freidin I am sure will agree, these are joys, Mr.
24 Chairman.

25 Q. All right. Now, I want to step back

1 a little then, Mr. Ward, from the particulars of the
2 fish guidelines in particular and ask you to agree -
3 and I give these concerns to you each individually. I
4 am going to set out that there are at least three
5 concerns that have to be addressed with respect to the
6 development and use of guidelines.

7 The first proposition I would ask you to
8 agree with has to do with effects, the effects of a
9 particular activity and, of course, in this case we are
10 talking about timber management, that in developing
11 guidelines or applying guidelines you have to identify
12 the effects that are of concern.

13 You would agree with that?

14 MR. WARD: A. I would.

15 Q. And when you are identifying those
16 effects it is as important to clearly identify
17 potential effects about which there is not a great deal
18 of information as it is to identify potential effects
19 about which a great deal is known?

20 A. I agree with that.

21 Q. And would you also agree with the
22 second concern with respect to the development of
23 guidelines, that we have to have a concern as to their
24 effectiveness -- as opposed to the effects themselves,
25 the effectiveness of the guidelines and that the

1 concern here, that you must put in place an adequate
2 monitoring program to determine whether the objectives
3 of the guidelines are being met?

4 Would you agree with those propositions?

5 A. I do.

6 Q. I would suggest to you and ask you to
7 agree that the third concern - there may be others, I
8 just find this breakdown sort of convenient - that the
9 third concern is compliance and the concern here is
10 that there has to be adequate observation of activities
11 to ensure proper enforcement of the guidelines.

12 Would you agree with that proposition?

13 A. I would.

14 Q. Now, Ms. Swenarchuk asked you several
15 questions about penalties if the guidelines were not
16 followed. Do you recall those questions?

17 A. You may have to refresh my memory on
18 some of them.

19 MR. FREIDIN: I can repeat what I
20 indicated to Ms. Swenarchuk. I think she did ask some
21 general questions along these lines, but I did advise
22 in terms of particulars in conformance monitoring, that
23 that would be the specific subject matter of Panel 16.

24 MR. CAMPBELL: Mr. Chairman, if I can
25 just have a moment.

1 Q. Now, Mr. Ward, in response to a
2 question from Ms. Swenarchuk which asked you about what
3 kind of enforcement strategies would be used, you
4 indicated that - I will just paraphrase part of your
5 answer - that in terms of violating the Fish Habitat
6 Guidelines and the penalties, it was the Crown Timber
7 Act that you would use right now for trespass if you
8 had a reserve in place and they cut to the reserve.

9 Could you just describe for me what kind
10 of penalties are involved in the Crown Timber Act in
11 that circumstance?

12 MR. FREIDIN: They are also included in
13 the Fisheries Act.

14 MR. CAMPBELL: That's true.

15 MR. WARD: I indicated that for trespass
16 the Crown Timber Act could be used by our timber
17 people, and I think I indicated that if the trespass
18 occurred down to the water's edge and affected critical
19 fish habitat that we would be looking at laying charges
20 under the Fisheries Act. I understand the Crown Timber
21 Act is being amended and maybe Mr. Kennedy can address
22 that question more fully.

23 MR. CAMPBELL: Q. All right. Your
24 answer -- you are quite right you did speak of the
25 Fisheries Act as well. My question is particularly in

1 relation to the Crown Timber Act, whether -- and I
2 guess I will give you the circumstance, a hypothetical
3 circumstance where there was a cutting into the reserve
4 established under the guideline, but there was no
5 proveable effect on critical fish habitat.

6 Say, you had that kind of circumstances,
7 what kind of penalties would you be contemplating under
8 those circumstances?

9 MR. WARD: A. I think we would need a
10 copy of the Crown Timber Act to see what penalties are
11 in that section.

12 Q. Well, if you are just going to quote
13 the sections then I won't bother with it, I can read
14 that, but I just wondered with the experience of the
15 various people whether they could give some indication
16 of what kind of penalties the Ministry would request?

17 MR. KENNEDY: A. I can give you some
18 overview. The penalty section normally deals with
19 the -- or it does deal with a relationship between the
20 amount of wood that has been harvested in the
21 trespassed area and the penalty that's associated with
22 that trespass is on a sliding scale of 1 to 5 times the
23 value of the Crown charges.

24 Q. And is that --

25 THE CHAIRMAN: Excuse me, when you say

1 Crown charges, that means the monies charged by the
2 Crown?

3 MR. KENRICK: Yes, more common words
4 would be the stumpage.

5 THE CHAIRMAN: Stumpage.

6 MR. CAMPBELL: Q. And in exercising --
7 in making a request for a penalty to be applied under
8 the Crown Timber Act, does the Ministry of Natural
9 Resources take into account that potential for
10 environmental damage that might be caused in a reserve
11 situation, or is the general practice simply to ask for
12 the value of the wood by way of a penalty, or the
13 stumpage by way of a penalty?

14 MR. KENNEDY: A. There is a section
15 contained in the report that is filed with the
16 occurrence of a trespass which deals with remedial
17 measures that may be taken to restore the conditions on
18 a site and, in that regard, there are other values and
19 other considerations taken into account.

20 Q. So I take it it is your evidence that
21 in putting forward its view as to the appropriate
22 penalties to apply, the Ministry of Natural Resources,
23 when taking action under this legislation, does take
24 into account the potential environmental damage that
25 was caused in addition to the value of the wood?

1 A. As well as other information, and I
2 would make that subject to having an opportunity to
3 look at the Act which you had said that you were
4 looking for a general understanding.

5 Q. Well, I am not asking for the
6 sections to be quoted, I am asking -- I mean, you were
7 one of the people who was responsible for making
8 administrative decisions under the legislation; were
9 you not?

10 A. In that regard, I was responsible for
11 making recommendations to the district manager, yes.

12 Q. All right. And was it your practice
13 when you were a unit forester under the kinds of
14 circumstances -- they may never have arisen, I don't
15 assume that they did, but if they did, would it have
16 been -- was there any guidance provided to you or did
17 you have any practice as to whether the potential for
18 environmental damage was reflected in penalties that
19 were sought under the Crown Timber Act?

20 A. Yes, I would say there was
21 consideration for those.

22 MR. CAMPBELL: Now, Mr. Chairman, this
23 may actually be a question for Mr. Freidin, but I think
24 I will put it to Mr. Clark and if Mr. Freidin thinks it
25 is inappropriate I tell him about -- I raise that

1 possibility before it is asked rather than after.

2 THE CHAIRMAN: Get ready to bounce up,
3 Mr. Freidin.

4 MR. FREIDIN: I am losing my bounce.

5 MR. CAMPBELL: Q. The question is this:
6 Assume the circumstance this EA is approved, it is
7 approved with the term and condition that the Fisheries
8 Habitat Guidelines be applied complete with their
9 mandatory minimum information requirements and
10 mandatory minimum slope-dependent reserves, and one of
11 those reserves gets cut, MNR is the proponent of this
12 Environmental Assessment and the term and condition of
13 this Environmental Assessment approval is breached.

14 Is it MNR's position that the breach of
15 that term and condition is something that rests against
16 them, or any charges that might arise out of that rests
17 against MNR, or is it your position that any charges
18 which might arise do not rest against MNR as the
19 proponent of the assessment but rather against, for
20 instance, a company that breached the guidelines in its
21 activities?

22 THE CHAIRMAN: Well, Mr. Campbell, just
23 using your scenario, are you suggesting that the
24 trespass would be -- if it was a trespass situation,
25 would be perpetrated not by the Ministry, but by the

1 licensee of the lands affected?

2 MR. CAMPBELL: I would like to understand
3 MNR's view of sort of who is the proponent, once the
4 approval is granted.

5 I am assuming approval is granted, I am
6 assuming that a term and condition that certain things
7 have to be met is part of the approval, the approval is
8 granted to MNR, MNR in carrying out the undertaking
9 controls the use of Crown land for timber management
10 purposes and something happens that is in breach of a
11 term and condition.

12 THE CHAIRMAN: Yes, but is it a question
13 where there is strict liability; in other words, MNR is
14 liable for the breach of any term and condition not
15 necessarily by itself but perpetrated by somebody else?

16 MR. CAMPBELL: Well, that is really my
17 question.

18 THE CHAIRMAN: I know and, in that case,
19 are you suggesting that a defence of due diligence
20 might be appropriate or are you just saying --

21 MR. CAMPBELL: You are way beyond me, Mr.
22 Chairman. I am just trying to determine what happens,
23 what MNR sees as happening and where MNR sees the legal
24 liabilities resting in the case of a term and condition
25 being breached where it isn't MNR forces who actually

1 mowed down the trees or did whatever else was done.

2 THE CHAIRMAN: And it is MOE that does
3 the prosecuting, right, as a breach of a term and
4 condition pursuant to the Environmental Assessment Act
5 application and approval?

6 MR. CAMPBELL: I think responsibility for
7 the administration of the Act rests with the Ministry
8 of the Environment, correct.

9 THE CHAIRMAN: Interesting scenario. Mr.
10 Freidin?

11 MR. FREIDIN: That matter is being
12 considered and will be expressly dealt with in Panel 16
13 in terms of enforcement. Not absolutely everything
14 that has to be considered and finalized in relation to
15 this assessment has been finally decided, so that is an
16 area that has not sort of gone unnoticed and there will
17 be evidence in relation to that matter in Panel 16.

18 THE CHAIRMAN: I think that is fair, Mr.
19 Campbell, certainly not for this panel, but let them do
20 what they can in Panel 16 and this might also be a
21 matter for argument.

22 MR. CAMPBELL: Yes, I raise the matter,
23 Mr. Chairman, in response to your question, not just
24 with respect to MOE of course, like most charges, there
25 can be other information laid and my recollection is

1 that Mr. Snow once went through that kind of a
2 prosecution and it was not at the instance of the
3 Minister of the Environment, so there can be other
4 circumstances which arise.

5 I just think -- the thrust of my question
6 though is really aimed at identifying, once an approval
7 is granted, who is seen as being ultimately responsible
8 for those terms and conditions being actually achieved
9 in the field. That is the question.

10 THE CHAIRMAN: Well, I think it is
11 certainly a matter of discussion for policy between the
12 various ministries as well as interpretation of the
13 application of law under the legislation. I do not
14 know that this panel can be particularly helpful with
15 that kind of question, that is all I am saying.

16 MR. CAMPBELL: That is why I was cautious
17 before putting it to them, Mr. Chairman.

18 Q. Mr. Pyzer, I think I want to turn
19 then to quite a different discussion then with you,
20 please.

21 This panel has been advocates of the view
22 that what has been described as a lack of wide-spread
23 public involvement in the formal timber management
24 planning process -- I am trying to hark back to some
25 words that I believe you used which was sort of the

1 formal defined process as opposed to all of these other
2 things that you do in the districts - the sort of lack
3 of public involvement in the formal timber management
4 planning process is because the public is generally
5 satisfied with MNR's -- with the opportunities that MNR
6 offers generally for public input into their activities
7 including timber management.

8 Have I kind of given -- is that a fair
9 overview of a great deal of evidence that you have
10 given?

11 MR. PYZER: A. I hate to disagree with
12 you but, no --

13 Q. Feel free, I am used to it.

14 A. I don't think I did say a lack of
15 public involvement. I think the point that we were
16 trying to make is the importance of front-ending as
17 many decisions as possible, and the fact that we are in
18 the community, that we do meet with these people on a
19 regular basis and, to the extent that we can, we try
20 and front-end the decisions.

21 Q. What does that mean?

22 A. Front-ending it?

23 Q. Front-end the decisions?

24 A. Trying to deal with issues and
25 identifying them as early as possible, and if that can

1 be at the absolute first notice of a timber management
2 plan starting to be prepared, doing it then as opposed
3 to waiting until an open house or a formal public
4 session.

5 Q. All right. But I also had the
6 impression from some of your testimony that there had
7 been sort of at these open houses, they had not been
8 swamped in terms of turnout and that you were quite
9 proud of that because it indicated that what you are
10 calling this kind of front-end -- dealing with
11 front-end decisions, front-end dealing with the public
12 was highly successful on an informal basis outside this
13 formal process?

14 A. No, I don't believe -- if I gave that
15 impression, I apologize. In fact, we went through some
16 transcript yesterday and I think the reference in that
17 transcript was that if 5,000 people showed up at the
18 very last open house or showed up towards the end of
19 the process upset I would have some great concerns
20 about that.

21 And the fact that they are not showing up
22 and that that has not happened, I do feel -- take some
23 pride in that.

24 Q. Okay, I think it was that kind of--

25 A. Yes.

1 Q. --comment that I am reacting to. The
2 fact is they are not showing up in great numbers at the
3 open houses.

4 A. Not the 5,000 scenario, that's
5 correct. The numbers in fact -- we did do analysis of
6 one of our plans and I believe from one five-year
7 period to the next there was a significant reduction,
8 and particularly in one user group in my district,
9 because it is so heavily tourist oriented, they were
10 tourist operators.

11 And when we went back looking at the
12 second go-round we were able to identify that in fact
13 instead of waiting until, say, the second stage of the
14 planning process, we were able to identify in the
15 second go-round through review that we had in fact
16 picked those up, we had identified them earlier, the
17 company had gone out, had met with tourist operators
18 fact to face. They had written down a contract, if you
19 will, between the two of them and they had basically
20 come to some good agreements.

21 And then when we questioned some of those
22 people -- in fact, we had an annual timber meeting, an
23 annual tourism meeting the first week of October in the
24 district and I raised that specific question with our
25 tourist operators and the feeling was that again they

1 had met with the company early on, that was one of the
2 reasons why they were not showing up at the open house,
3 they believed that their concerns had been well
4 addressed and, in fact, asked us should -- is there a
5 need to show up at this particular meeting, and I
6 certainly hesitate to tell anyone no, but their feeling
7 was that they had been fairly well treated.

8 Q. All right. I guess what I am trying
9 to get at is a more general question than that kind of
10 particular example and if all examples are like that,
11 tell me, but -- and at the end of this discussion I
12 will do some hard thinking about it.

13 Maybe I will connect this a little
14 differently. The advantages for a company in a forest
15 management agreement are associated with tenure; is
16 that correct, they get tenure for that particular unit?

17 A. Correct.

18 Q. And they get some sort of
19 compensation or alternative supply for wood if the wood
20 quantities contemplated in the agreement are not
21 available?

22 A. Pardon me?

23 Q. If the wood quantities contemplated
24 in the agreement are not available there is -- that
25 matter is dealt with under the forest management

1 agreement?

2 A. No, I don't believe so. I think the
3 company prepares a M-A-D calculation, a MAD calculation
4 and whatever the allowable cut is they plan to harvest
5 the allowable cut.

6 Q. All right.

7 A. If it is not enough, then they have
8 to go elsewhere to find that wood, certainly not
9 over-cut the unit.

10 Q. I am not suggesting they will
11 over-cut the unit.

12 A. I am sorry.

13 Q. But I had understood that there were
14 provisions in a forest management agreement whereby if
15 the expected quantities of wood were not available,
16 that there was some arrangements for alternate supply
17 to fill out to those quantities or otherwise deal with
18 that question. Am I wrong?

19 A. Certainly my understanding you are,
20 from a management unit perspective.

21 Q. What do you mean from a management
22 unit perspective?

23 A. Just that, that you don't over-cut
24 the management unit.

25 Q. I am not suggesting you over-cut the

1 management unit.

2 A. Well, but that would be the only way
3 you could get more wood from it.

4 Q. Well, I thought that you could --
5 couldn't you supply from an adjacent unit if that was
6 available or something like that?

7 MR. KENNEDY: A. Mr. Campbell, are you
8 recalling the evidence given by Panel 4 on the wood
9 supply discussions?

10 THE CHAIRMAN: Sorry, do you want to
11 repeat that again, please, the reporters didn't get it.

12 MR. KENNEDY: Mr. Campbell, I am
13 wondering if you are recalling the evidence given by
14 Panel 4 in the wood supply scenario?

15 MR. CAMPBELL: Q. Yes.

16 MR. KENNEDY: A. Okay. Those were dealt
17 with through the timber management planning process not
18 through our forest management agreement, if I could
19 point that out.

20 Q. Are there any arrangements put in
21 place in the management of these units whereby it is
22 contemplated by the company that it would receive
23 certain amounts of wood, and if those amounts of wood
24 are not available there is an obligation on the Crown
25 to provide wood from other sources or in any other way,

1 to compensate for that situation?

2 A. The obligation would be in the sense
3 that it would be MNR's desire to assist the company in
4 maintaining their historical levels and, as such, they
5 would facilitate locating additional wood supplies from
6 adjacent units and participate in those discussions.

7 Q. All right. Well, I can see that I am
8 off on a hare that won't run, I gather there are no
9 such arrangements of the type that I have described
10 that place an obligation on the Crown?

11 A. I would say there is no --

12 MR. PYZER: A. If it assists in any way,
13 I know that Boise Cascade, as an example in my
14 district, does go outside the district, it goes to
15 Manitoba and it goes to United States to get wood to
16 supply the demand or the need at the mill.

17 Q. Well, I understand that, Mr. Pyzer,
18 but with respect, I don't think it is responsive to my
19 question.

20 A. Well, I think it is because we don't
21 supply, we don't go to the effort to get it. If we
22 don't have it, they have to go elsewhere to find it.

23 Q. Mr. Pyzer, my question was this - and
24 I think we have asked an interrogatory in a later panel
25 and maybe I will just leave it - but my question was:

1 Whether there was any obligation assumed
2 by the Crown by way of forest management agreement or
3 any other process whereby the Crown undertook that
4 certain amounts of wood would be available and
5 undertook an obligation that if only lesser amounts
6 could be supplied, that some steps would be taken to
7 make up the difference in some way or another?

8 A. I am not aware of any.

9 Q. And are you --

10 MR. KENNEDY: A. Yes, I can think of one
11 circumstance when you have opened it up to -- I believe
12 your words were FMA or plans or any other circumstance.
13 I can think of one instance which would be a timber
14 supply agreement which I believe evidence was led in
15 Panel 4 as well and a brief discussion of licensing.

16 That would occur within the timber
17 management planning process, specifically within the
18 tables that deal with the amount of demand that is
19 existing from industry within the management unit or
20 the industry that is depending upon that management
21 unit, and then through the series of tables that are
22 shown in the plans, the unit's ability to meet that
23 demand is recorded, along with the other pressures that
24 existed in that unit leading to a summary of the
25 surplus or a deficit amount of wood available on a

1 particular management unit which then would kick in, if
2 I can use that phrase, the wood supply models that were
3 talked about in the end of Panel 4.

4 THE CHAIRMAN: But is not that still, Mr.
5 Kennedy, something the Ministry can consider but is not
6 obliged up front to guarantee?

7 MR. KENNEDY: That's correct.

8 MR. MARTEL: You have a 20-year plan --
9 you have a 20-year FMA, and in a five-year plan, your
10 operational plan, as I understand.

11 MR. KENNEDY: Yes.

12 MR. MARTEL: Let's say you have a fire
13 and much of that area burns down, then don't you within
14 the FM -- the unit, take with it -- you might have
15 planned for year 7 and allowed them to cut it in year 3
16 if need be.

17 MR. KENNEDY: Mr. Martel, you are correct
18 in that all timber management plans are for a 20-year
19 period with specific operations and areas selected for
20 the five-year term.

21 One of the provisions that are included
22 in the planning process now in order to deal with the
23 concern that you raise, such as a large fire, is the
24 inclusion of a contingency area.

25 A contingency area would be an area that

1 would have undergone full comprehensive planning
2 process. As such, all of the areas of concern would
3 have been identified through the process and relative
4 prescriptions would be prepared and, essentially, the
5 area would have full planning conducted on it and it
6 would be in a holding pattern; it would not be approved
7 for timber management activities.

8 At the time that a catastrophe such as a
9 fire or another -- or some other circumstances evolved
10 that required additional timber for that management
11 unit, the first area that would be considered would be
12 the contingency area and at that time an amendment
13 would have to be processed in order to allow the
14 operations to proceed in that area.

15 And there are -- well, I will save you
16 from the amendment process for today and I will just
17 advise that we will be dealing with, in Panel 15, both
18 the contingency area and the amendment process.

19 There is other circumstances that are
20 available and that is depending on the severity of the
21 situation involved. It may call for an unscheduled
22 renewal of the entire timber management plan and that
23 is the plans are scheduled for renewal on a five-year
24 basis, but if in year 3 a large fire occurred in the
25 area, it is possible that the contingency area would

1 not resolve the situation for the amount of area that
2 was set aside and for the significance of the fire, and
3 in that situation an entire new plan would have to be
4 written and, hence, an unscheduled renewal would occur.

5 Also at that time it may be necessary to
6 engage in a contingency plan which would be a course of
7 action to be followed by the MNR and the supporting
8 industry to overcome the situation that would be at
9 hand. And, in that regard, Ministry of the Environment
10 is involved in the discussions on the contingency plan
11 which would be the actions taken to allow the industry
12 to continue in a curtailed fashion and get back on to a
13 normal planning scheme.

14 MR. CAMPBELL: Q. All right. So as I
15 understand it, there is no obligation with respect to
16 the amount of wood; when these various agreements or
17 other arrangements are entered into, the Crown assumes
18 no obligation as to the total quantity of wood to be
19 supplied; is that right?

20 MR. KENNEDY: A. With the exception of
21 the one itme that I mentioned.

22 Q. You have gone through -- you mean
23 this agreement, the timber supply agreement--

24 A. Correct.

25 Q. --does have such an obligation?

1 A. Yes, it is a form of licensing, is my
2 understanding.

3 THE CHAIRMAN: Could you speak up a
4 little bit, Mr. Kennedy, we are having trouble hearing
5 you.

6 MR. PYZER: A few of the companies, to my
7 understanding, Mr. Campbell, have these timber
8 supplies, if you will. So if, say, one of the units in
9 Kenora District Boise's units were to totally burn
10 down, you would have a major problem because there is
11 no obligation to find them wood and they would be
12 operating a mill without wood supply.

13 MR. CAMPBELL: Q. Mr. Pyzer, let me turn
14 to some of the other users on the various lands and ask
15 you some questions about those.

16 With respect to, for instance, trappers,
17 do they have tenure on the trapline, do they have a
18 legal right that MNR cannot take away from them--

19 MR. PYZER: A. No.

20 Q. --for the use of those traplines?

21 A. No, they do not. We can transfer a
22 trapline, we can take a trapline away if a trapper did
23 not meet his quota. I believe the only user group that
24 has ownership, if you will, is the commercial fisherman
25 through his commercial licence, that's the allocation,

1 the direct allocation of the resource.

2 A tourist operator -- as an example, a
3 tourist operator on a remote fly-in lake, in effect,
4 has a land use permit to occupy a piece of land, does
5 not have an allocation to fish.

6 Q. With respect to that land use permit,
7 that permit is held at your discretion?

8 A. If it is a land use permit, that's
9 correct.

10 Q. And similarly with the ability to
11 trap in an area?

12 A. Runs in our discretion?

13 Q. Yes, in that there--

14 A. Yes--

15 Q. --is no tenure of that line?

16 A. --as long as he meets the conditions,
17 that's correct.

18 Q. And with respect to the trapping
19 cabin, that's also held under a land use permit and is
20 held at your discretion?

21 A. I believe they are issued under a
22 land use permit, that's correct.

23 Q. And that land use permit remains at
24 your discretion, you can withdraw it at any time?

25 A. That's correct. Any building or

1 structure that occupies Crown land requires
2 authorization, and any commercial use of Crown land
3 requires that authorization through a land use permit,
4 a licence of occupational lease or patent.

5 Q. All right. And is that generally
6 true of all uses of Crown land which you regulate or
7 Crown resources which you regulate with the exception
8 of the tenure that's granted under the agreements with
9 the companies?

10 Are there any other examples where
11 similar tenure is granted?

12 A. Again, with the commercial fishermen.
13 Commercial fishermen have an allocation of quota that's
14 very similar to a licensed forest management -- or a
15 licensed company. That's probably the best analogy,
16 the best comparison.

17 Q. But do you have the right to withdraw
18 that quota?

19 A. No.

20 Q. All right. Is that the only other
21 example that is of that type?

22 A. To the best of my knowledge, to the
23 best of my recollection, yes, that's...

24 Q. All right. So that apart from the
25 commercial fishing quota, all of the other users that

1 are involved in your various programs in that sense of
2 tenure and having a legal right are in quite a
3 different position from the tenure that's granted to
4 the companies; is that fair?

5 A. I believe commercial fishermen and
6 the companies have the most direct allocation, that's
7 correct.

8 Q. Well, are they unique in the sense of
9 the tenure that they are granted?

10 MR. COSMAN: Mr. Chairman, my friend is
11 asking questions that really call for legal
12 conclusions, legal opinions.

13 I don't want to get into a debate or a
14 discussion, but I can't sit and allow the suggestion to
15 the Board that there is some unlimited tenure the
16 companies have when their agreements are reviewed every
17 five years with the right to have those agreements put
18 to an end and then the company loses its rights over
19 the land.

20 I have no problem with the question -- I
21 have no problem with the line of questioning, but not a
22 line of questioning that invites legal conclusions from
23 a non-legal witness.

24 MR. CAMPBELL: Mr. Chairman, I am asking
25 Mr. Pyzer questions that relate more to what his

1 discretion is as a manager of MNR programs and I would
2 have thought that he would know the areas in which he
3 had discretion or could exercise discretion and where
4 that discretion was limited, and that's really the
5 contrast I am trying to make.

6 I am sorry my friend views this as simply
7 a legal question. I think it is a question that is
8 aimed at the whole approach to regulating all of these
9 various activities that have an impact and relationship
10 with timber management planning.

11 THE CHAIRMAN: Well, Mr. Pyzer, can you
12 go beyond your answer that commercial fishing and the
13 allocations to timber companies of certain allowable
14 cuts, apart from those two similarities in, to use the
15 word, tenure, the others are all on a different
16 category, being fully discretionable at the instance of
17 the Crown.

18 MR. PYZER: Yes, discretion is
19 probably -- it is a difficult term for me to handle
20 with because -- the reason I mentioned commercial
21 fishermen, if we want a commercial fisherman, for
22 whatever reason, off a particular lake, the only way we
23 can remove him from that lake is to buy his quota. It
24 has to be a willing buyer/willing seller arrangement.

25 Now, with a tourist operator who has a

1 land use permit, I suppose theoretically we don't have
2 to issue that land use permit. In my experience, I
3 don't know when that has ever been done.

4 I believe a bait fisherman, that is
5 another example, I do not believe we can remove a bait
6 fisherman from his block without good reason and I
7 believe he can appeal to the Game and Fish
8 Commissioner.

9 So that is probably another example that
10 somewhere inbetween that is leading toward the
11 commercial fisherman, he has some status there and as
12 long as he meets that on a year-by-year basis, I don't
13 have very much discretion, certainly, in removing a
14 bait fisherman.

15 THE CHAIRMAN: Where are you going with
16 this line of questioning, Mr. Campbell, exactly?

17 MR. CAMPBELL: Mr. Chairman, what I
18 wanted to test with Mr. Pyzer was: I wanted to examine
19 whether we were really able in any way here to test the
20 perception which he and other members of this panel
21 have argued that there is, by and large, significant
22 satisfaction with decisions that MNR makes.

23 And, generally speaking, determine
24 whether that perception was - not that it is being put
25 forward in any improper way - but just whether that

1 perception -- what evidence there is to indicate that
2 that perception is in fact a reality as opposed to the
3 conclusion of a very well meaning and articulate person
4 who believes that to be the case.

5 THE CHAIRMAN: Well, why don't we just
6 ask a simple question: Has the Ministry in its
7 experience, at least in the experience of this panel,
8 been flooded with a number of appeals or challenges to
9 its exercise of its discretion in terms of some of
10 these users of various resources for which the Ministry
11 licenses?

12 MR. PYZER: In all honesty, no. The
13 NOTOA convention is occurring right this week up at the
14 Airplane Hotel up there, and certainly there is one
15 industry where we have moved from issuing land use
16 permits on a yearly basis, we have now gone to land use
17 permits on a five-year basis.

18 We are now looking at moving from land
19 use permits to licences of occupation and we are
20 talking -- in terms of most of the large tourist
21 establishments, they have now gone to patent, so we are
22 now patenting those properties.

23 All of the cottage lots that are on
24 government leased land, basically all of those cottages
25 now we are in the process of upgrading those to patents

1 as well and selling the land.

2 In terms of appeals, almost everyone --
3 the decision a district manager makes on LUPs certainly
4 that is appealable to the Minister. Any of the game
5 and fish applications are certainly appealable to the
6 Game and Fish Commissioner. I don't know if that helps
7 any.

8 THE CHAIRMAN: What has your experience
9 been? Have there been a lot?

10 MR. PYZER: I can't...

11 THE CHAIRMAN: You don't know?

12 MR. PYZER: I cannot think of one.

13 THE CHAIRMAN: You cannot think of one?

14 MR. PYZER: I cannot think of one tourist
15 operator where we have withdrawn -- other than one,
16 yes, I can, as a result of a conviction, an illegal use
17 of Crown land, some of his other land use permits were
18 removed.

19 But other than that, I cannot think of
20 any. I cannot think of any bait fish blocks that we
21 have removed. Commercial fishermen, we have purchased
22 on a willing buyer/willing selling basis.

23 Wild rice, in my district they are all
24 allocated to Indian reserves and that is a
25 non-negotiable -- we are not in the habit of buying

1 those in any event. So I cannot think of any
2 situation.

3 MR. CAMPBELL: All right. Mr. Chairman,
4 with respect, I think those questions do somewhat beg
5 the way I want to deal with this issue.

6 Q. And I would like to go back and, Mr.
7 Pyzer, come back to your view that these appeals don't
8 happen.

9 MR. PYZER: A. Pardon me?

10 Q. These appeals don't happen in
11 response to the kind of question the Chairman asked;
12 people don't take vigorous steps to try and deal with
13 decisions they are unhappy with, and your view, very
14 eloquently expressed, is that by and large you resolve
15 concerns.

16 A. Sorry, the point I was trying to make
17 I guess is the reason they are not appealed is because
18 we are not in the habit of removing the permits to
19 begin with.

20 Q. I understand, and my question is much
21 more general than that, it has to do with decisions
22 that you take that affect all of the myriad of people
23 who are dependent in one way or another on your
24 different programs.

25 And I guess I would just ask you to

1 agree, as a starting proposition, that in most of those
2 relationships it is quite clear that the power in that
3 situation rests with MNR; that is, you have a large
4 amount of discretion available to you in the decisions
5 you make and you have the right and the obligation to
6 make those decisions, implement them, and you do so?

7 A. Well, Mr. Campbell, we have Acts, the
8 Public Land Act which says that if anyone wants to
9 occupy Crown land for a commercial purpose they must
10 get that authority from the Ministry.

11 Q. Mr. Pyzer, I am not suggesting there
12 is anything wrong in this. What I am suggesting is
13 that in terms of the dynamics of the situation, your
14 relationship with the public, you control the programs,
15 you have the obligation to control them?

16 A. Absolutely.

17 Q. People on the other side of that
18 relationship recognize that the power in that
19 relationship ultimately rests with you; is that not
20 correct?

21 A. We administer those Acts, correct.

22 Q. But in terms of the dynamics of the
23 situation, am I not correct that the power in that
24 relationship ultimately rests with you, with MNR?

25 A. With the Ministry as the steward of

1 land, land and resources, correct.

2 Q. Exactly. And in that relationship
3 where you say you don't get a lot of these appeals and
4 you feel that things are administered smoothly, there
5 aren't a lot of complaints and so on, you put forward
6 the proposition in your evidence that that is because
7 people by and large are happy with the decisions you
8 are making, they feel things have been fairly resolved.

9 Is that a fair summary of what you have
10 been saying?

11 A. I am trying to understand, Mr.
12 Campbell, and I may be misunderstanding you. The
13 appeal -- we have now switched from appeals because of
14 decisions which we can make, if we are now talking
15 about timber management planning as appeals to...

16 Q. I am talking about the whole range of
17 decisions that you have to make that affect peoples'
18 activities in relation to Crown lands.

19 A. And I would just like to emphasize
20 the reason, in terms of the administrative side, the
21 reason we have no appeals is because we have not been
22 in the habit of giving them or doing something to make
23 them appeal with.

24 We are not in the habit of taking LUPs
25 back, of taking bait fish blocks back or removing

1 trappers. So from the administration of Act point, the
2 reason no one is appealing is because, by and large, we
3 are not taking things away from people.

4 Q. All right.

5 MR. FREIDIN: Mr. Chairman, the witness I
6 think is trying to make a distinction between the
7 adminstration of Acts where, in fact, it provides for
8 revocation of licences and where there are appeals and
9 now he's trying to deal with something else.

10 I think he has just tried a couple of
11 times to make a distinction between that and a timber
12 management plan and if he is, he should be allowed to
13 continue and finish his answer.

14 THE CHAIRMAN: Well, I think the Board
15 wants to know, Mr. Campbell, exactly where this is
16 going to go, because if it is a matter of the panel
17 indicating in their view the reasons there are not
18 appeals and the reason that people are generally
19 content with their decisions, they derive that opinion
20 from their ongoing relationship - and you might like to
21 suggest that perhaps that is not the case why they are
22 so-called happy, but rather because they do not have
23 much choice in the matter since the Ministry has the
24 power, so to speak, in its bailiwick as opposed to the
25 other way around - I mean, isn't that sort of a

1 legislative matter in the sense that the legislature
2 has passed the legislation giving a particular agency
3 or ministry stewardship of resources and land, Crown
4 lands, and that is just the way it is.

5 Maybe it would be nice if the power
6 structure were shifted somewhat, but that in fact is
7 not the way it is necessarily under the legislation.

8 MR. CAMPBELL: Mr. Chairman, I take
9 absolutely no issue with the fact that the Ministry of
10 Natural Resources, as does my client, has certain
11 obligations and does their best -- uses their best
12 efforts and all good intentions to do that.

13 What my questions are leading to, and
14 singularly unsuccessfully, I just can't seem to be
15 getting there, is simply the proposition that in a
16 relationship like this - and I am going to ask Mr.
17 Pyzer to comment on this - in a relationship like this,
18 where the Ministry of Natural Resources clearly does
19 exercise that kind of power into a myriad of activities
20 that affect a myriad of people, that it is perhaps not
21 surprising that in most instances people don't rock the
22 boat, and that that perception has to be, I am going to
23 suggest and ask by way of a hypothetical question to
24 Mr. Pyzer - and I ask this not because I have any
25 conclusion on the matter, but because I think it is

1 worth exploring - that that kind of -- he has put
2 forward one perception in his evidence, but it is
3 because people, generally speaking, feel matters are
4 being fairly resolved.

5 What I would like him to eventually
6 comment on is the hypothesis that says:

7 Well, just a minute, isn't there another
8 possibility that people are reluctant to rock the boat
9 too much and that, in fact, the perception that we have
10 been presented with as to how the public perceives MNR
11 is - while I am sure presented in all good faith and
12 honesty - not testable or, if it has been tested, by
13 what method, that is really my question is, if so much
14 of what these people are talking about depends on that
15 perception.

16 THE CHAIRMAN: Well, it as testable by
17 other parties calling witnesses to say that that is not
18 why they are not rocking the boat; is it not?

19 MR. CAMPBELL: Well, I will -- sure, I
20 mean people can call as many examples as they want.

21 What I am saying is that it is not
22 testable in the normal way that cross-examination can
23 test evidence, and that is really the proposition that
24 I would like Mr. Pyzer to comment on, is that those of
25 us who are listening to him have absolutely no way to

1 test that proposition.

2 Q. Now, if I'm wrong and if you have
3 done some public attitude surveying or something like
4 that, I would really like to know about that, but other
5 than that I don't know how I can test that perception.

6 MR. PYZER: A. It is a good question
7 actually and I would like to comment on it.

8 The Indian fishing agreement that got
9 talked about the other day, one test I guess that I
10 would have is the Indian fishing agreement, when it
11 came to Kenora, I think there was maybe one
12 advertisement a week or two beforehand and because it
13 is a big issue the crowd overfilled the hotel and they
14 spilled out onto the streets.

15 I put newspaper ads three, four times for
16 timber management planning process, I have a mailing
17 list of over a thousand people, I am telephoning every
18 chief in the district, I am sending registered letters
19 to them, I am calling people in the United States, I am
20 phoning people in Manitoba, I am talking to every
21 trapper, and I can get five or ten people out there. I
22 compare what I am doing versus what other agencies are
23 doing and they are getting overflow crowds.

24 I look in comparison and see that I am
25 doing five, ten, maybe twenty times the effort and I

1 can't draw them out.

2 I think part of the reason for that - and
3 I will give you another example - is next week, we are
4 going to meet with the 200-member Kenora Fish and Game
5 Club, the conservation group. We are going to be
6 talking about all of these timber management issues,
7 totally outside of the timber management planning
8 process, we are going to talk to them about everything
9 and anything they want to talk about for as long as
10 they want to talk. Having done those sorts of things,
11 and doing that as often as they wanted to do it, I can
12 understand sometimes when only five or six of them then
13 show up at the timber management open house.

14 I simply compare myself to what everyone
15 else is doing and honestly believe we are bending over
16 backwards to get people to come out far more than other
17 agencies.

18 Q. I accept that you honestly believe
19 it. My question is slightly different though: How do
20 I sit here and say in the end the Minister of the
21 Environment, if this process that is approved doesn't
22 work, is going to have to deal with an incredible
23 number of bump-up requests, how do I test whether the
24 belief that you express is in fact the reality of what
25 is perceived in the minds of the public who will be

1 bringing this kind of concern, if they do, to my
2 Minister once this process is implemented?

3 A. Well, I guess one of the tests is
4 that I believe most of the groups that we are dealing
5 with know right now they have the opportunity to
6 bump-up and I guess I would ask you: How many of those
7 thousand people on the mailing list that we are dealing
8 with have asked you to bump-up a plan in Kenora
9 District?

10 THE CHAIRMAN: Or, alternatively, Mr.
11 Campbell, the Board would suggest this is that kind of
12 forum, this is a forum which can test public opinion,
13 if you want to call it that, in the broadest sense as
14 to whether or not perceptions made by one side, on this
15 side the Ministry, are valid or invalid or are borne
16 out.

17 MR. CAMPBELL: I don't disagree with that
18 at all, Mr. Chairman, in fact that is a very important
19 function of this kind of forum.

20 What my question is to this witness in my
21 cross-examination is: How can I, in the course of
22 cross-examination, or any other body in the the course
23 of their cross-examination of these witnesses, test
24 that proposition that is being put forward?

25 I can ask: Do you believe it; yes, I

1 believe it. Now --

2 THE CHAIRMAN: But maybe it cannot be
3 tested in cross-examination, maybe it has to be tested
4 in another facet of the process.

5 MR. CAMPBELL: That's fine.

6 THE CHAIRMAN: Either through direct
7 evidence or --

8 MR. CAMPBELL: If Mr. Pyzer -- that is
9 exactly the conclusion and the proposition that I think
10 is reality.

11 Q. And the fact of the matter is, Mr.
12 Pyzer, do you agree with that, that in fact it cannot
13 be tested through cross-examination and can only be
14 tested through other facets of the process?

15 MR. PYZER: A. After what I just heard,
16 I would agree with that.

17 MR. FREIDIN: I was just wondering why it
18 took us an hour to get to that.

19 MR. COSMAN: Mr. Chairman, certainly a
20 witness cannot answer a question as to whether or not
21 something can be tested through cross-examination.

22 I can tell my friend exactly how it might
23 be tested through cross-examination by suggesting the
24 opposite to what the witness said and then leading
25 evidence, if there is evidence, to deal with it, and

1 that is the normal way to test this kind of thing
2 through cross-examination.

3 THE CHAIRMAN: Well, with respect, Mr.
4 Campbell, I do not know that we are going to get that
5 far down this road because of I think you have reached
6 the same perception that maybe this is not the type of
7 testing that can be accomplished appropriately through
8 cross-examination.

9 MR. CAMPBELL: Well, I think Mr. Pyzer
10 has noted that he agrees with that proposition.

11 Q. The only other question I have of
12 this panel is whether the Ministry, to the best of
13 their knowledge, has done any research to satisfy
14 themselves that the perception that they are expressing
15 is in fact the perception that is expressed by the
16 public?

17 MR. PYZER: A. In an indirect way I
18 would say yes. I say that from a Kenora District
19 perspective and I don't want to lead you to believe
20 that everyone in Kenora District is walking around
21 saying they love the Ministry of Natural Resources,
22 that is definitely not the case.

23 What they do though, I believe, is say
24 that they believe they have had a fair hearing. I know
25 that the angler and hunter group, when we go next week,

1 I think I can tell you most of the issues they want to
2 talk about. They want to talk about road access into
3 lakes where tourist operators are, they want to talk
4 about that conflict of tourist operators versus the
5 local residents.

6 Now, the test of that -- I say the test
7 of that is when one of those clients phones me and says
8 that they are going somewhere or they are going to be
9 meeting with senior staff of the Ministry, and given
10 the dealings which we have had - and this has happened
11 in real life - can I tell them how they should best
12 express their view to a politician or to another
13 member. And they take us into their trust to ask us
14 how they can best put forward their argument because --
15 and that has happened certainly in the tourist
16 industry.

17 And so I believe that while they feel
18 they may not have won every time or lost every time,
19 they believe they have had a fair hearing and they are
20 asking us to put into words for them how they best can
21 argue their case.

22 Q. All right.

23 THE CHAIRMAN: Have you taken a survey?

24 MR. CAMPBELL: Q. But short of that kind
25 of anecdotal situation, has there been any real public

1 attitude research that any member of this panel is
2 aware of to determine whether that perception is in
3 fact the widely held perception of the Ministry in its
4 planning activities?

5 MR. PYZER: A. Not in a general sense.
6 I can think of site-specific examples.

7 Again, another case would be Shoal Lake
8 where the Ministry wanted to do an action in terms of
9 closing the fishery, our data and information was
10 suspect by certain groups and so the Minister at the
11 time hired an independent biologist, he hired an
12 independent lawyer to audit the Ministry, audit what we
13 had done, audit the books, if you will, and there was a
14 group that didn't support what we were doing and what
15 we were proposing, and the bottom line was that, if
16 anything, we had acted conservatively on it and we had
17 operated correctly and the Shoal Lake Fishery is closed
18 down.

19 Q. All right. But if I -- to get back
20 to my question: I gather no member of this panel is
21 aware of any public attitude research that would
22 support that view of the Ministry which is reflected in
23 your evidence; is that correct?

24 MR. CLARK: A. I believe that's correct.

25 Q. Mr. Pyzer, are you aware of any?

1 MR. PYZER: A. No, I am not aware.

2 Q. Any other member of the panel aware
3 of any?

4 (no response)

5 MR. CAMPBELL: Mr. Chairman, if you were
6 going to break today this would be a good time.

7 THE CHAIRMAN: Okay. Ladies and
8 gentlemen, we will break at this point until nine
9 o'clock tomorrow morning and, at that time, we will
10 continue with Mr. Campbell's cross-examination and then
11 move on to Mr. Freidin's re-examination and we will
12 consider, at the time, Mr. Freidin, whether there has
13 to be a gap inbetween those two events.

14 MR. FREIDIN: Do we know how long Mr.
15 Campbell might be?

16 THE CHAIRMAN: Do you have any feeling
17 for that, Mr. Campbell, at this time?

18 MR. CAMPBELL: I don't think I would be
19 anything like people from time to time have used so
20 far, provided that some understanding is reached with
21 respect to these guidelines.

22 THE CHAIRMAN: Well, you will be dealing
23 with that tonight, hopefully.

24 MS. MURPHY: May I have 30 seconds? I
25 just have a document here, two examples of an attempt

1 to take another run at the summary witness statement,
2 whatever, with an example of a method of doing a more
3 detailed cross-reference.

4 I have provided these two examples to a
5 number of my colleagues and I thought it might be of
6 assistance to you to have a look at it and it would
7 certainly be of assistance to me because I can't finish
8 the next panel until I am certain what you want.

9 THE CHAIRMAN: All right. If you want to
10 submit it to us we will have a look at it.

11 MS. MURPHY: I think I will go the long
12 way.

13 THE CHAIRMAN: Okay.

14 Well, ladies and gentlemen, I think we
15 will adjourn until 9:00.

16 We wish you the best of luck in your
17 attempts at front-ending the evidence concerning Panel
18 8 in terms of scoping and we will hopefully talk about
19 that tomorrow afternoon.

20 ---Whereupon hearing adjourned at 5:25 p.m., to be
21 reconvened on Wednesday, November 16th, 1988,
commencing at 9:00 a.m.

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